TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 728

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR

v.

JACOB A. GOLDMAN, LOUIS J. DESMARE, CLEM MINER, ET AL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO

FILED JANUARY 31, 1938

(33175)

723

Appeal under Criminal
Appeals act of 1907

=

Information for Contempt
by Violation of decree in U.S.v
Coal Regrades et al - & - 24 Chapter
Act
The third par applies - this ch
has jurisdiction. =

I

a. Contempts are "Criminal Cases" -
Gompers v U.S. 233/604. Ex parte Grossman
267/87 - Michaelson U.S. 266/42.

b & c. Motion to dismiss here was based on
Clayton Act - which was barred

Clause that — alibi was barred
"plea at bar"
Mt Thompson 251/409
" Oppenheimer 242/85
" Rakemarker 238/78

a- No jeopardy —

II §25 - Clayton Act forbidding one year doing
with Officer § 24 except - Contempts
committed by Violation of U.S. decree —

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1 In United States District Court, Southern District of Ohio, Western Division

No. ——

THE UNITED STATES OF AMERICA, COMPLAINANT

v.

CALVIN U. WHIFFEN, HERMAN OELSCHLAGER, DANIEL P. HENDRICKSON, E. Conant Livingston, E. Murray Aerenschield, Paul G. Boehm, George H. Flaherty, Hugh B. Scott, Herman L. Barker, Alfred D. Evers, Joseph D. Myers, Ralph C. Brown, Leslie Claus, John A. Campbell, Robert A. Morris, Cornelius Penberthy, William B. Rich, John D. Cardall, Herman W. Meyers, Harry A. Barnes, George F. Finnegan, Lemuel E. Bell, George E. Baudrand, Charles S. Fortune, George D. Daum, Arnold L. Wood, Frank A. Grady, Richard Ward, Jack Fogarty, Edward W. Tillson, Stanley E. Stout, George J. McCarthy, William E. Zimmerman, Howard T. Bennett, William C. Bryant, Edmund A. Peiser, Aaron C. Sample, Jerome B. Bliss, Norval F. Robbins, Emanuel B. Peterson, Lester H. Bolte, Leroy Lynch, Thomas W. McCue, Jacob A. Goldman, Wilbur J. Long, Louis J. Desmare, Neven C. Hawthorn, Coman Norton, John T. Collins, John G. Shankle, Goldwin Smith, Clem Miner, Stephen L. Perry, David R. Crandall, Clarence J. Ramspott, Hugh Montgomery, Cletus C. Deardorf, John A.
2 Muldoon, Ray V. Sullivan, Edward L. Blake, Walter D. Young, Henry C. Cook, Frank E. O'Connor, George A. Baker, Walter M. Stearns, Nathan H. Wetstein, Eugene L. Gleason, Edward H. Schmeiding, Fred. I. Schmeiding, William S. Clark, Harry A. Wackerly, Leo J. McCoy, Marquette Lane, Nathan W. Dubbs, Chester C. Hixenbaugh, John A. Hickey, Harry L. Dubel, Richard J. Brace, Joseph H. Hall, Joseph B. Cummins, Philip J. Seibert, Harlow E. Johnson, Max Peller, John W. Poppenberg, jr., Robert J. Kavelage, Harvey S. Crocker, Charles T. Walsh, Lawton J. Boudreau, Charles R. Moore, Barby G. Welton, Edward T. Balfrey, and Harold V. O'Bryan, defendants

Information charging criminal contempt

To the honorable SMITH HICKENLOOPER,
Judge of the District Court of the United States for the Southern District of Ohio.

The United States of America, by Haveth E. Mau, its attorney for the Southern Judicial District of Ohio, acting under the direction of John G. Sargent, its Attorney General, presents this information and petition for a rule and for attachments, and complains against the persons hereinafter named, all of whom, with the ex-

ception of Emanuel B. Peterson and George F. Finnegan, during the times of the commission of the numerous wrongful and illegal acts which they are hereinafter severally charged with having committed, where either in the employ of the National Cash Register Company (a corporation organized and existing under the
3 laws of the State of Ohio, and engaged in the manufacture of cash registers at its factory at the city of Dayton, Ohio) as members of what is commonly known as the selling force of said corporation, and during all said times were engaged in the sale in the several States of the United States of the cash registers so manufactured by said corporation as above stated, or in the employ of the agents of said corporation (whether such agents were designated by said corporation as district managers, sales agents, salesmen, or otherwise), and during all said times were engaged in the sale in the several States of the United States of the cash registers so manufactured by said The National Cash Register Company at Dayton, Ohio, as above stated, and shipped by said corporation into the several States of the United States for sale therein by the persons hereinafter named as defendants and the other members of its selling force.

The said Emanuel B. Peterson, during the times of the commission of the several wrongful and illegal acts which he is hereinafter charged with having committed, was engaged in the business of selling Underwood typewriters at and in the territory surrounding the city of Pocatello, in the State of Idaho.

The said George F. Finnegan, during the times of the commission of the several wrongful and illegal acts which he is hereinafter charged with having committed, was engaged in the business of selling scales, known as the Toledo scales, at and in the territory surrounding the city of Riverside, in the State of California.

4 The names, and the present addresses so far as known, of the several persons herein charged with the commission of the numerous wrongful and illegal acts hereinafter severally charged against them, are as follows:

DEFENDANTS

Name	Address
Calvin U. Whiffen	Los Angeles, Calif.
Herman Oelschlager	Orange Cove, Calif.
Daniel P. Hendrickson	Los Angeles, Calif.
E. Conant Livingston	Stockton, Calif.
E. Murray Aerenschield	Stockton, Calif.
Paul G. Boehm	Stockton, Calif.
George H. Flaherty	Los Angeles, Calif.
Hugh B. Scott	Los Angeles, Calif.
Herman L. Barker	Miami, Fla.
Alfred D. Evers	Los Angeles, Calif.
Joseph D. Myers	Los Angeles, Calif.
Ralph C. Brown	Los Angeles, Calif.

	Name	Address
	Leslie Claus	Los Angeles, Calif.
	John A. Campbell	Los Angeles, Calif.
	Robert A. Morris	Santa Barbara, Calif.
	Cornelius Penberthy	Los Angeles, Calif.
	William B. Rich	San Bernardino, Calif.
	John D. Cardall	San Bernardino, Calif.
	Herman W. Meyers	Long Beach, Calif.
	Harry A. Barnes	Long Beach, Calif.
	George F. Finnegan	Riverside, Calif.
	Lemuel E. Bell	San Diego, Calif.
	George E. Baudrand	Santa Rosa, Calif.
	Charles S. Fortune	Sacramento, Calif.
	George D. Daum	Sacramento, Calif.
	Arnold L. Wood	Sacramento, Calif.
	Frank A. Grady	Santa Rosa, Calif.
	Richard Ward	San Jose, Calif.
	Jack Fogarty	Asbury Park, N. J.
	Edward W. Tillson	San Francisco, Calif.
	Stanley E. Stout	San Francisco, Calif.
	George J. McCarthy	San Francisco, Calif.
	William E. Zimmerman	San Francisco, Calif.
	Howard T. Bennett	San Francisco, Calif.
	William C. Bryant	San Francisco, Calif.
	Edmund A. Peiser	Oakland, Calif.
	Aaron C. Sample	Salem, Oreg.
	Jerome B. Bliss	Pocatello, Idaho.
	Norval F. Robbins	Pocatello, Idaho.
	Emanuel B. Peterson	Pocatello, Idaho.
	Lester H. Bolte	Salt Lake City, Utah.
	Leroy Lynch	Denver, Colo.
5	Thomas W. McCue	Dallas, Tex.
	Jacob A. Goldman	New Orleans, La.
	Wilbur J. Long	New Orleans, La.
	Louis J. Desmare	New Orleans, La.
	Neven C. Hawthorn	New Orleans, La.
	Coman Norton	New Orleans, La.
	John T. Collins	Miami, Fla.
	John G. Shankle	Tampa, Fla.
	Goldwin Smith	Des Moines, Iowa.
	Clem Miner	Des Moines, Iowa.
	Stephen L. Perry	Fon du Lac, Wis.
	David R. Crandall	St. Louis, Mo.
	Clarence J. Ramspott	Cairo, Ill.
	Hugh Montgomery	Charlotte, N. C.
	Cletus C. Deardorf	Lexington, Ky.
	John A. Muldoon	Chicago, Ill.
	Ray V. Sullivan	Milwaukee, Wis.
	Edward L. Blake	Milwaukee, Wis.

Name	Address
Walter D. Young	Milwaukee, Wis.
Henry C. Cook	Jackson, Mich.
Frank E. O'Connor	Lansing, Mich.
George A. Baker	Detroit, Mich.
Walter M. Stearns	Detroit, Mich.
Nathan H. Wetstein	Youngstown, Ohio.
Eugene L. Gleason	Columbus, Ohio.
Edward H. Schmeiding	Canton, Ohio.
Fred I. Schmeiding	Canton, Ohio.
William S. Clark	Canton, Ohio.
Harry A. Wackerly	Canton, Ohio.
Leo J. McCoy	Cleveland, Ohio.
Marquette Lane	Cleveland, Ohio.
Nathan W. Dubbs	Pittsburgh, Pa.
Chester C. Hixenbaugh	Pittsburgh, Pa.
John A. Hickey	Philadelphia, Pa.
Harry L. Dubel	Philadelphia, Pa.
Richard J. Brace	Wilkes-Barre, Pa.
Joseph H. Hall	Scranton, Pa.
Joseph B. Cummins	Brooklyn, N. Y.
Philip J. Seibert	Brooklyn, N. Y.
Harlow E. Johnson	Brooklyn, N. Y.
Max Peller	Brooklyn, N. Y.
John W. Poppenberg, jr	Brooklyn, N. Y.
Robert J. Kavelage	Elizabeth, N. J.
Harvey S. Crocker	Boston, Mass.
Charles T. Walsh	Fitchburg, Mass.
Lawton J. Boudreau	Utica, N. Y.
Charles R. Moore	Boston, Mass.
Barby G. Welton	Pittsfield, Mass.
Edward T. Balfrey	Lawrence, Mass.
Harold V. O'Bryan	Lawrence, Mass.

6 And complainant now here informs the court:

I

That on December 4, 1911, the United States of America filed its petition in the Circuit Court of the United States for the Southern District of Ohio, Western Division, against the National Cash Register Company; John H. Patterson, E. A. Deeds, G. C. Edgeter, W. F. Bippus, Robert Patterson, J. A. Oswald, S. W. Davies, George G. Shaw, E. H. Bunstine, H. G. Carnell, A. A. Thomas, Thomas J. Watson, Joseph Rogers, Alexander Harned, F. S. High, M. G. Keith, W. M. Cummings, J. C. Laird, Pliny Eves, A. A. Wentz, George E. Morgan, C. T. Walmsley, W. C. Howe, C. A. Snyder, Walter Cool, E. H. Epperson, Myer N. Jacobs, and M. L. Lasley, being Equity Cause No. 6802, in which it charged that the several

defendants named therein, by the use of the unfair and unlawful means set forth in said petition, were engaged in a combination and conspiracy to restrain the interstate and foreign trade and commerce in cash registers and other registering devices, of other persons, firms, and corporations engaged in the manufacture and in the sale in interstate and foreign commerce of cash registers and other registering devices, in competition with said defendants, and that by the use of the unfair and unlawful means charged in said petition said defendants were attempting to monopolize, and were monopolizing, such trade and commerce of such other persons, firms, and corporations in cash registers and other registering devices.

7 II

That such proceedings were had in said cause; that on February 1, 1916, there was entered therein a final decree, which, since the time it was entered, has continuously remained in full force and effect, and now is in full force and effect, which said final decree (caption omitted) is in the words and figures following:

FINAL DECREE

This day come the parties, by their counsel, and thereupon the defendants hereinafter named, consenting not to oppose the entry of the following decree, as more fully appears by their written consent on file herein, and the plaintiff, through its counsel, having moved for an injunction, on consideration thereof the court finds for the plaintiff and against said defendants, and that the plaintiff is entitled to the relief prayed for in the following particulars:

It is therefore ordered, adjudged, and decreed:

First. That the defendants, the National Cash Register Company, John H. Patterson, G. C. Edgeter, W. F. Bippus, Robert Patterson, George G. Shaw, H. G. Carnell, Alexander Harned, F. S. High, M. G. Keith, W. M. Cummings, J. C. Laird, Pliny Eves, C. T. Walmsley, C. A. Snyder, E. H. Epperson, Myer N. Jacobs, and M. L. Lasley, have combined to restrain and have attempted to monopolize interstate and foreign trade and commerce in cash

8 registers in violation of sections 1 and 2 of the anti-trust act of July 2, 1890, by one or another of the means hereinafter enjoined.

Second. That the defendant, the National Cash Register Company, its directors, officers, agents, and employees, and the individual defendants, John H. Patterson, G. C. Edgeter, W. F. Bippus, Robert Patterson, George G. Shaw, H. G. Carnell, Alexander Harned, F. S. High, M. G. Keith, W. M. Cummings, J. C. Laird, Pliny Eves, C. T. Walmsley, C. A. Snyder, E. H. Epperson, Myer N. Jacobs, and M. L. Lasley, their employees, agents, and servants, and any other persons authorized to act or acting for or in behalf of any of them

be and they are hereby jointly and severally enjoined and restrained as follows:

(a) From persuading or inducing, or attempting to persuade or induce, a purchaser of a cash register or other registering device manufactured or sold by any competitor, or a person who has agreed or contracted to become such purchaser, to break or repudiate his contract of purchase, or to return or refuse to receive the cash register or other registering device so bought or agreed to be bought, or to refuse to pay for the same in accordance with his agreement with said competitor.

(b) From espionage upon a competitor or his agent, or a solicitor of a competitor, or upon a retail dealer in the cash registers or other registering devices of a competitor, for the purpose of obtaining the names or addresses of purchasers or prospective pur-
9 chasers from any such competitor or retail dealer, or for the purpose of obtaining any other information as to his private affairs or business; and from using any information so obtained in order to dissuade or endeavor to dissuade any person or persons from purchasing any cash register or other registering device manufactured or sold by a competitor.

(c) From inducing, or attempting to induce, either directly or through another, any employee or ex-employee of any competitor, or of his agent or dealer, to disclose to said defendants or to either of them or to any person for them or for either of them the business secrets of his employer or former employer.

(d) From inducing, or attempting to induce, any employee or agent of a compeitor, or any dealer in the cash registers or registering devices of a competitor, to leave the service of such competitor, or to cease to deal in such competitor's cash registers or other registering devices, and from employing or attempting to employ any such agent or employee so induced to leave the service of a competitor, or any such dealer so induced to cease dealing in the cash registers or other registering devices of a competitor, as an agent or employee of the defendant corporation or any company organized as a successor to its business in whole or in part.

(e) From using any information as to the trade secrets or business confidences of any competitor which shall have been derived from any person who shall have been in the employ of any such
10 competitor and which shall have been obtained by him in the course or by means of such employment.

(f) From manufacturing, selling, or offering for sale any cash register or other registering device made to resemble in appearance a competing cash register or registering device, or producing, or designed to produce, the same or similar results, or performing, or designed to perform, the same or similar functions, when sold or offered for sale, not in good faith for the purpose of earning profits therefrom, but for the dominant purpose of preventing sales of such competing cash registers or registering devices, or of inducing

the purchaser or owner of the competing cash register or registering device to substitute therefor one of such similar machines; or from selling any cash register or registering device at a price fixed with reference not to the cost of manufacture but solely with reference to the price of the said competing cash register or register device, for the purpose of driving from business in interstate or foreign commerce the manufacturer of or dealer in such competing cash registers or other registering devices.

(g) From selling or otherwise disposing of any cash register or other registering device manufactured by a competitor, whether acquired by purchase, exchange, or otherwise, not for the purpose of realizing therefrom as much as practicable but for the dominant purpose or intent of preventing sales by a competitor or retail dealer in the cash registers or registering devices of a competitor, and
11 from acquiring any such cash register or other registering device, manufactured by any competitor, for any of the purposes specified in this subparagraph of this decree.

(h) From selling or otherwise disposing of any second-hand cash register or other registering device of the defendant's own make for the purpose not of realizing therefrom as much as practicable but for the dominant purpose of underselling a competitor and driving him from business: Provided, That nothing herein contained shall prevent any sale or offer at a price made in good faith to meet competition.

(i) From employing any person, whether known as a "special man," or "competition man," hereby defined to be an employee, to have as his principal business not the promotion of the sale of cash registers or other registering devices of the make of the defendants, or the solicitation of orders therefor, but the prevention of sales of cash registers or other registering devices by a competitor, or his agent or dealer.

(j) From following from one city or village to another, or from one place in the same city or village to another place therein, any competitor, or his salesman, or agent, or any dealer in a competitive cash register or other registering device, for the purpose of hindering such competitor, salesman, agent, employee, or dealer, while attempting to sell any cash register or other registering device, or for the purpose of ascertaining the names of the persons upon whom, or the places of business at which such competitor, salesman, agent, employee, or dealer, may call.

12 (k) From making or circulating, or causing to be made or circulated, any statement, report, representation, or insinuation reflecting upon the solvency or responsibility, financially or otherwise, of any competitor, or upon the efficiency of any competing cash register or other registering device, when such statement, report, representation, or insinuation is either a misrepresentation or is made for the mere purpose, not of directly promoting the sale of registers or other registering devices manufactured by defendants,

but of preventing the sale of competing cash registers or other registering devices, or of driving such competitor from business.

(l) From using or publishing, or causing to be used or published, any document, circular, or letter the purpose or intent of which is to recommend or suggest to agents or employees of the defendants the doing of any act herein forbidden; and from in any manner communicating to such agents or employees any means of accomplishing or bringing about any such act.

(m) From intimidating, or attempting or threatening to intimidate any competitor or any person contemplating becoming a competitor in the manufacture or sale of cash registers or other registering devices in interstate or foreign commerce by maintaining or making a display of models of machines of the defendant's make, together with various rival machines which they were built to resemble or to displace, or by maintaining or making a display of quantities
13 of second-hand registers or other registering devices of a competitor, or by displaying placards or statements purporting to show the amounts lost by various competitors in an effort to compete with the defendant corporation or its predecessors, and from intimidating or attempting or threatening to intimidate, by any such means, investors, or persons contemplating becoming investors in the stocks or other securities of competing companies formed or to be formed.

(n) From maintaining as an obstensible competitor any corporation organization owned, directed, or controlled, by stock ownership or otherwise, by said defendants or any of them or affiliated with them or any of them without disclosing the connection with the said defendants.

(o) From intimidating, or attempting or threatening to intimidate purchasers or prospective purchasers of competing cash registers or other registering devices, with suit or liability for patent infringement unless and until such claim of infringement has been sustained by a court of competent jurisdiction. But nothing herein contained shall prevent defendant corporation or its proper representative from serving in good faith upon any such purchaser a formal notice of its claim of infringement.

(p) From acquiring ownership or control directly or indirectly, by means of stock ownership or otherwise, of the whole or an essential part of the business, patents, or plant of any competitor engaged
14 in the manufacture or sale of cash registers or other registering devices in interstate or foreign commerce: Provided, That in case any such acquisition is desired, a petition may be presented to this court stating the reasons therefor, and if the court, upon investigation into all the circumstances of the case and after notice of not less than sixty days to the Attorney General, shall determine that such business or patents or plant so desired to be acquired will supplement the plant, patents, machines, or facilities of the defendant corporation and that the acquisition thereof is de-

sired for that purpose and will not substantially lessen competition, then jurisdiction is reserved to pass an order permitting the same upon such terms and conditions as may be right.

THIRD. That jurisdiction of this cause be and is hereby retained for the purpose of enforcing this decree, and for the purpose of enabling the parties to apply to the court for modification hereof if it be hereafter shown to the satisfaction of the court that by reason of changed conditions or changes in the statute law of the United States the provisions hereof have become inappropriate or inadequate to maintain competitive conditions in interstate or foreign trade in cash registers or other registering devices in the United States, or have become unduly oppressive to the defendants and are no longer necessary to secure or maintain competitive conditions in such interstate and foreign trade.

FOURTH. That defendants pay the costs of this suit to be taxed.

FIFTH. That said petition be and it is hereby dismissed without prejudice as against the defendants S. W. Davies, E. H. Bunstine, A. A. Thomas, and A. A. Wentz.

HOLLISTER, *Judge*.

FEBRUARY 1, 1916.

III

That each of the several persons named as defendants herein, at and prior to the times he made the false and the unfair statements, and committed the wrongful and illegal acts, which he is hereinafter severally charged with having made and committed, had been fully advised with respect to all the provisions of said final decree so entered in said cause on February 1, 1916, and then knew, or had good reason to believe, that said statements and acts were in violation of the provisions of said decree.

IV

That the statements, representations, and insinuations, made by the several defendants, as charged herein, reflecting upon the solvency or responsibility, financially or otherwise, of the companies and persons engaged in the manufacture and sale, or sale, in interstate commerce, of competing cash registers, and especially of the Remington Cash Register Company, Inc., or reflecting upon the efficiency of competing cash registers, and especially of Remington cash registers, as hereinafter charged, were willful misrepresentations, some being false and unfair, and others false and unfair as made; and the demonstrations and pretended demonstrations made upon competing cash registers, and especially upon Remington cash registers, by the several persons named as defendants herein, to purchasers and prospective purchasers of Remington cash registers and of other competing cash registers, as hereinafter charged, were fraudulent, deceptive, and unfair; all such statements and demonstrations either being misrepresentations, or made and

given for the mere purpose, not of directly and fairly promoting the sale of National cash registers, but by such false and unfair means, either of preventing sales of competing cash register, and especially sales of Remington cash registers or of inducing persons who had purchased such competing cash registers to break their contracts of purchase and to return such cash registers to the persons from whom they had purchased them, or to refuse to accept such cash registers so purchased, or to refuse to make further payments upon the purchase price of cash registers purchased, and thus to force the companies and their salesmen to retake them, and thereby to drive the manufacturer of such competing cash registers, and the persons selling such competing cash registers, out of business.

V

That by reason of the willful, wrongful, and illegal acts committed by the several persons named as defendants herein, manufacturers of cash registers competing in interstate and foreign com-
17 merce with the cash registers of said The National Cash Regis-
ter Company, above named, and especially the Remington Cash Register Company, Inc., which manufacturers its cash register at its factory at Ilion, New York, and salesmen for all such competing cash registers, whether new or secondhand cash registers including salesmen for Remington cash registers, have been greatly harassed in the sales of their cash registers; have had sales of their cash registers canceled; have had purchasers thereof refuse to receive them; have had purchasers thereof refuse to make further payments upon their purchase price, and have thus forced the companies and their salesmen to retake such cash registers, thus causing loss to them; by reason whereof such manufacturers of such competing cash registers, and the salesmen for such competing cash registers, have suffered great loss and damage in the manufacture and in the sale of such cash registers, so manufactured and sold in interstate commerce in competition with the cash registers of said The National Cash Register Company.

VI

That all said willful, wrongful, and illegal statements and acts made and committed by the several persons named as defendants herein, and as hereinafter charged, were made and committed with full knowledge, and in defiance of the terms of said final decree entered in said Equity Cause No. 6802, on February 1, 191-
18 and in contempt of the authority of this court, all with a view to driving all manufacturers of, and salesmen for, competing cash registers out of business.

VII

Wherever the words "the National Cash Register Company" are used in this information, they refer to the National Cash Regis-

Company against which said final decree was entered in the United States District Court for the Southern District of Ohio, Western Division, at Cincinnati, Ohio, on February 1, 1916, in the case of the United States of America, complainant v. The National Cash Register Company et al., being Equity Cause No. 6802 in said court, and wherever the word "Decree" is used in this information, it refers to the decree entered on that date in that cause.

VIII

Complainant therefore, avers and charges that the several defendants named herein have severally, willfully, and knowingly disobeyed and violated the prohibitions contained in said final decree entered in said cause on February 1, 1916, as before stated, by the means, in the manner, and for the purposes as herein stated:

CHARGES

19 ### Defendant Herman Oelschlager

The defendant Herman Oelschlager, during the various times he did the wrongful and unfair things and made the false and unfair statements respecting Remington cash registers, as now here charged, was employed at Los Angeles, Cal., as a salesman for National Cash Registers (under the authority of the defendant, Calvin U. Whiffen, sales agent), for the National Cash Register Company.

20 (d) On or about July 1, 1923, Jacob Gelsinger, then owner of a meat market at 46th and Central Avenue, Los Angeles, Cal., desired to purchase a cash register for his said place of business. Prior thereto said Gelsinger had had demonstrated to him a Remington cash register, and had about decided to purchase such a cash register.

The defendant Herman Oelschlager when advised by said Gelsinger, on or about July 1, 1923 (the precise date being unknown to complainant), that he, said Gelsinger, had about decided to purchase a Remington cash register, then and there, among other things, in substance, stated to said Gelsinger:

That the National Cash Register Company was taking in Remington cash registers all the time;

That a Remington cash register would last only thirty days and then the customer would become dissatisfied and turn it in and buy a National cash register; and

That he would take him to the National Cash Register office in said city of Los Angeles and show him a lot of secondhald cash registers that he could buy cheap.

And also then and there made other false and derogatory statements concerning Remington cash registers.

As a result of these statements said Gelsinger did then visit the office of said National Cash Register Company in Los Angeles, then

under the authority of the defendant, Calvin U. Whiffen, and that while in said office, for the purpose above stated, the defendant Daniel P. Hendrickson, then floor salesman in said office as heretofore in this complaint stated—

21 Took said Gelsinger back into a storeroom in the rear of said office and then and there pretended to demonstrate to him the alleged defects of Remington cash register, upon a Remington cash register then being retained in said room for such purpose.

Said Hendrickson then and there stated that he could sell said Gelsinger said Remington cash register for $125.00, and then proceeded to show said Gelsinger how it was possible to reset the adding wheels of said cash register without the control key, and also made said cash register give an incorrect total, through trickery, or through the fact that said cash register had been tampered with in order to make it appear to be defective, and as a result of which false and unfair statements on the part of the defendant Herman Oelschlager and such false statements and demonstration on the part of said defendant Daniel P. Hendrickson said Gelsinger was thus wrongly induced to purchase a National cash register;

All of which being in willful violation of paragraph K of said decree.

Defendant Daniel P. Hendrickson

The defendant Daniel P. Hendrickson, during the various times he did the wrongful and unfair things and made the false and unfair statements respecting Remington cash registers, as now here charged, was employed at Los Angeles, Cal., as a salesman for National cash registers (under the authority of the defendant Calvin U. Whiffen) for the National Cash Register Company.

22 (a) On or about July 10, 1923, Jacob Gelsinger, of 2075 West Jefferson St., Los Angeles, Cal., then operating a number of meat markets in said city, was a prospective purchaser for a cash register. After salesmen for both National and Remington cash registers had demonstrated to him their respective cash registers, said Gelsinger, on or about July 10, 1923, went to the office of the National Cash Register Company and of the defendant Calvin U. Whiffen, in Los Angeles, for the purpose of making a further investigation of the merits of said cash registers.

While in said office on said date, having stated that he was interested in the Remington cash register, he was thereupon taken in charge by the defendant Daniel P. Hendrickson, then employed as floor salesman in said office by said Calvin U. Whiffen, in the sale of National cash registers, who then proceeded to make to said Gelsinger a pretended demonstration upon a Remington cash register then in said office.

During said demonstration, with a view to discrediting the efficiency and reliability of Remington cash registers, said Hendrickson

showed said Gelsinger how it was possible to reset the adding wheels of said registers without the use of the control key, and then and there also manipulated said cash register in such a way that after ringing up a number of pretended sales upon the register it registered an incorrect total.

As a result of such unfair and false demonstration upon said Remington cash register, said Gelsinger was led to believe that Remington cash registers were defective and not reliable, and he thereupon purchased two National cash registers; that said results were accomplished by said Hendrickson by means of trickery and deception and for the purpose of discrediting said cash registers, all in willful violation of paragraph K of said decree.

23 Defendant E. Conant Livingston

The defendant E. Conant Livingston, during the various times he did the wrongful and unfair things and made the false and unfair statements respecting Remington cash registers, as now here charged, was employed at Los Angeles, Cal., as a salesman for National cash registers (under the authority of the defendant Calvin U. Whiffen), for the National Cash Register Company.

(b) On or about August 27, 1923, Basil R. Clark, druggist at 1701 West Adams St., Los Angeles, Calif., purchased through a Remington salesman two Remington cash registers.

Shortly thereafter (the precise date being unknown to complainant), the defendant E. Conant Livingston came to the store of said Clark and tried to sell him a National cash register, but was advised by said Clark that he had already purchased Remington cash registers.

Thereupon said Livingston criticised his judgment for having purchased Remington cash registers, advised him how it was possible to reset the adding mechanism on Remington cash registers without the use of the control key, and invited said Clark to visit the Los Angeles office of the National Cash Register Company in order that he might there demonstrate to him, said Clark, how it was possible to do so, but Mr. Clark refused to do so.

Said Livingston also then stated to said Clark, in substance, that many of the Remington users were having trouble with their Remington cash registers, and that he believed it to be a matter of only a few months until he, Clark, would have trouble with them.

Thereupon said Livingston further criticised said Clark for having bought Remington cash registers, and made other derogatory statements concerning said cash registers.

That said statements were made to said Clark by said Livingston for the purpose of discrediting said Remington cash registers, and of thereby trying to induce said Clark to cancel his contract for them and to purchase National cash registers.

All of which was in willful violation of paragraphs A and K of said decree.

24 Defendant E. Murray Aerenschield

The defendant E. Murray Aerenschield, during the several times he did the wrongful and unfair things and made the false and the unfair statements respecting Remington cash registers, as now here charged, was employed at Los Angeles, Cal., as a salesman for National cash registers (under the authority of the defendant Calvin U. Whiffen), for the National Cash Register Company.

(a) On or about April 24, 1923, H. S. Springer, then operating a drug store at 2929 South Vermont St., Los Angeles, Cal., purchased through a Remington salesman a Remington cash register, and on or about May 25, 1923, purchased through said salesman, a second Remington cash register.

Shortly after the purchase of said cash registers by said Springer (the precise date being unknown to complainant), and upon several occasions thereafter (the precise dates not being known to complainant), but within three or four months after his purchase of said cash registers, the defendant E. Murray Aerenschield came into his place of business and upon seeing his Remington cash registers stated, in substance, to said Springer, upon one of said occasions, that his Remington cash registers were a pile of tin; that Remington cash registers were no good and that the National Cash Register Company was trading them in every day; that he could get said Springer a used Remington cash register from a dissatisfied user at approximately one-half of the regular price of Remington cash registers; and upon the occasions of his several visits made other and similar remarks derogatory of Remington cash registers, all for the purpose and with the intent of attempting to discredit the efficiency of Remington cash registers, with the intent of thereby inducing said Springer either to trade his Remington cash registers upon a National cash register, or to break his contract for his Remington cash registers, and all in willful violation of paragraphs A and K of said decree.

25 Defendant George H. Flaherty

The defendant George H. Flaherty, during the several times he did the wrongful and unfair things and made the false and the unfair statements respecting Remington cash registers, as now here charged, was employed at Los Angeles, Cal., as a salesman for National cash registers (under the authority of the defendant Calvin U. Whiffen), for the National Cash Register Company.

(a) On or about January 30, 1923, Mrs. Mariam Richter, owner of a gas service station at 901 East 12th St., Los Angeles, Cal., purchased through a Remington salesman a Remington cash register.

26 After her purchase of said cash register and prior to September 1, 1923, the defendant George H. Flaherty from time to time between said dates (the precise dates being unknown to

complainant) called upon her several times for the purpose of trying to induce her to break her contract for the purchase of her Remington cash register and to purchase a National cash register.

Upon some of these visits said Flaherty brought with him other salesmen for National cash registers, and also brought with him and demonstrated to her a Remington cash register. Said Flaherty, by some means unknown to her, caused the Remington cash register he had with him to add incorrectly, but was unable to manipulate her register so that it would do so, his purpose in making such a pretended demonstration of said Remington cash register being to lead said Mrs. Richter to believe that her cash register was not reliable and would not afford her proper protection against employees who might wish to defraud her.

Upon another occasion said Flaherty brought to her place of business a Remington cash register which, he stated, in substance, had been used but one week and which became so loose that the purchaser, although he had nearly completed payment of the purchase price, became so disgusted with it that he was willing to lose all he had paid upon it and bought a National cash register.

Upon one occasion, without her consent, said Flaherty, rep-
27 resenting himself to be the son of her, said Mariam Richter, called up the Remington cash register salesmen over the telephone and stated that she was dissatisfied with her Remington cash register which she had purchased of them and wished them to take it away.

During these visits said Flaherty and the salesmen for National cash registers who came with him made many statements derogatory of Remington cash registers.

As a result of these visits and of this conduct upon the part of the defendant George H. Flaherty, about September 1, 1923, he induced her to sign a contract for a National cash register, he agreeing to pay $80.00, the amount then unpaid upon her said Remington cash register.

All of these unfair things were done and all of these false and unfair statements made by the defendant George H. Flaherty, derogatory of Remington cash registers, for the purpose of attempting to induce said Mariam Richter to break her contract for the purchase of her said cash register and to purchase a National cash register, all in willful violation of paragraphs A and K of said decree.

(b) On or about July 24, 1923, C. E. Cole and C. R. Ransom, partners in a restaurant, at 1429 Central Avenue, Los Angeles, Calif., purchased through a Remington salesman a Remington cash register.

Within a few days thereafter (the precise date being unknown to complainant) the defendant George H. Flaherty came to the
28 restaurant of said Cole and said Ransom and upon seeing their said Remington cash register said to them, in substance: "Why don't you take that register out and put in a National?"

Further stating to them that they had paid $200.00 for a register in a two-bit place; that he could sell them a cash register for $75.00 that would do their work and give them entire satisfaction, and then and there made many other remarks derogatory of Remington cash registers in trying to induce them to cancel their order for the Remington cash register, send it back to the Remington Cash Register Company, and purchase a National cash register.

That for a period of about thirty days thereafter the defendant Flaherty returned to their place of business almost daily, making many remarks similar to those above set out, and otherwise trying to induce said Cole and said Ransom to cancel their contract for their Remington cash register and to purchase a National cash register, until finally they ordered said Flaherty to stay away from their place of business.

All of which things were said and done by the said George H. Flaherty for the purpose of trying to induce said Cole and said Ransom to cancel their contract for the purchase of their Remington cash register, return it to the company, and to purchase a National cash register, all in willful violation of paragraphs A and K of said decree.

29 Defendant Joseph D. Myers

The defendant Joseph D. Myers, at the times he did the unfair things and made the false and unfair statements respecting Remington cash registers, as now here charged, was a salesman for National cash registers at Los Angeles, Cal. (under the authority of the defendant Calvin U. Whiffen), for the National Cash Register Company.

30 (a) On or about April 14, 1923, Albert L. Marsh, owner of a lunch room and pool room at 6091 Sunset Blvd., Hollywood, Cal., purchased through a Remington salesman a Remington cash register, which was installed in his place of business a short time thereafter.

About one month after the installation of his cash register (the precise date being unknown to complainant) the defendant Joseph D. Myers visited the place of business of said Marsh and, upon seeing the Remington cash register in his place of business then and there stated to Marsh that the National Cash Register Company was entitled to all of the cash-register business there was, since that company had developed the business and brought it to its present development.

That about a week thereafter (the precise date being unknown to complainant) the defendant Joseph D. Myers again visited the place of business of said Marsh, and upon being advised by said Marsh that he had purchased the Remington cash register then in his place of business then and there tried to induce the said Marsh to cancel his contract for his Remington cash register and to purchase a National cash register, and suggested to Marsh that by doing so he suggested he could get rid of his Remington cash register, pur-

chase a National register, and make $25.00 or $50.00 in the transaction.

For the purpose of so trying to induce said Marsh to cancel his contract for his Remington cash register, said Myers stated to
31 him, in substance, that he, said Myers, was trying to sell a National cash register to a merchant named Mihiel, whose place of business was located near the place of business of said Marsh, said Mihiel being the owner of a Remington cash register. Said Marsh was to return his Remington cash register to the Remington Cash Register Company, cancel his contract for the same, then purchase from said Mihiel his Remington cash register, assume the remaining indebtedness upon it, and that then said Myers would sell to said Mihiel a National cash register, the said Marsh to save from $25.00 to $50.00 under the suggested arrangement; but said Marsh refused to become a party to the scheme.

The defendant Joseph D. Myers at the time he so suggested to said Marsh that he cancel his contract for his Remington cash register and purchase the cash register claimed by said Myers to have been owned by said Mihiel also stated to said Marsh, in substance, that the Remington Cash Register Company would not be in business very long; that if the printing-paper detail strip on the Remington cash register ever ran out on him during the day it would be impossible for him to obtain a total of the day's business or to tell how much business he had done at all, and also then and there made other false and unfair statements to said Marsh respecting Remington cash registers, all of which statements and offers on the part of said Myers were made for the purpose of trying to induce said Marsh to cancel his contract for his Remington cash register and to purchase a National cash register, and all of which were in willful violation of paragraphs A and K of said decree.

32 Defendant Jack Fogarty

The defendant Jack Fogarty, at the times he did the wrongful and unfair things and made the false and unfair statements respecting Remington cash registers, as now here charged, was a salesman at Stockton, Cal., for National cash registers (under the authority of the defendant E. Conant Livingston) for the National Cash Register Company.

(a) On or about October 6, 1923, H. L. Waycott, proprietor of the Art Floral Company, 140 North Carolina St., Stockton, Cal., purchased through a Remington salesman a Remington cash register.

Shortly thereafter (the precise date being unknown to complainant), and after said cash register had been installed in the place of business of said Waycott, the defendant Jack Fogarty called at his place of business and upon being advised by said Waycott that he had purchased the Remington cash register then and there, among other things, stated, in substance, to said Waycott:

That Remington cash registers would not add correctly; that his cash register would soon wear out; advised said Waycott to throw

his tin can (meaning his Remington cash register) out and send it back to the Remington Company before it was too late and to purchase a National cash register; and then and there also made other false statements to said Waycott respecting Remington cash registers (but which complainant for want of knowledge is unable here to set forth); all of which false and unfair statements so then and there made to said Waycott being made for the purpose of trying to discredit Remington cash registers and of leading said Waycott to believe that they were not reliable but were worthless, and thereby trying to induce him to cancel his contract for his Remington cash register and to purchase a National cash register, all of which was said and done in willful violation of paragraphs A and K of said decree.

33 Defendant Aaron C. Sample

The defendant Aaron C. Sample, during the times he did the unfair things and made the false and unfair statements respecting Remington cash registers, as now here charged, was a salesman at Seatle, Wash., for National cash registers (under the authority of George H. Dowling, sales agent), for the National Cash Register Company.

(a) On or about June 4, 1923, Charles J. Darby, then a salesman for Remington cash registers at Bellingham, Wash., and surrounding territory, called on Gisher & Alderson, owners of a store at Birch Bay, Washington, for the purpose of trying to sell that firm a Remington cash register.

While said Darby was demonstrating a Remington cash register to said Gisher & Alderson, the defendant Aaron C. Sample, who had been following said Darby from place to place as he would call on different persons in an effort to sell them Remington cash registers, drove up to the place of business of said Gisher & Alderson, stopped his car, and went over to where said demonstration was being given and watched the demonstration for some time, then went into the store and talked to Lora C. Gisher, a member of said firm, in an effort to sell him a National cash register, and in the course of his conversation then and there stated to said Gisher, in substance, in the hearing of said Darby and said Alderson, among other things:

That Remington cash registers were made from a cast-off patent owned by the National Cash Register Company, which had
34 been discarded because it was regarded as being very unsatisfactory and impratical.

That the National Cash Register Company had been manufacturing cash registers for over 20 years, and therefore it should be a better register than the Remington.

That Remington cash registers would not do satisfactory work, and then and there made other similar remarks derogatory of Remington cash registers which were not clearly heard by said Darby.

That the defendant Sample in so following said Darby, salesman for Remington cash registers, from place to place was doing so for the purpose of ascertaining the persons upon whom said Darby was calling in his effort to sell Remington cash registers, and of then interfering with said Darby while attempting to sell his said cash registers, as he did so interfere with said Darby while he was demonstrating and attempting to sell a Remington cash register to said Gisher & Alderson, as above stated.

That the defendant Aaron C. Sample so followed said Darby from place to place, as above stated, and interfered with him while attempting to sell his cash registers, as aforesaid, and made the false and unfair statements respecting Remington cash registers to said Gisher, as aforesaid, for the purpose of thereby preventing said Darby from selling his cash registers and with a view of then selling such persons National cash registers, all of which was in willful violation of paragraphs B, J, and K of said decree.

35 Defendants Jerome B. Bliss, Norval F. Robbins

The defendant Jerome B. Bliss, during the times he did the unfair things and made the false and unfair statements respecting Remington cash registers, as now here charged, was sales agent at Pocatello, Idaho, and surrounding territory, for the National Cash Register Company, and therein engaged in selling National cash registers.

The defendant Norval F. Robbins, during the times he did the unfair things and made the false and unfair statements respecting Remington cash registers, as now here charged, was a salesman at Pocatello, Idaho, for National cash registers (under the authority of the defendant Jerome B. Bliss) for the National Cash Register Company.

(a) On or about May 25, 1923, L. Douglas McGhie, a salesman for Remington cash registers in that territory, sold to Clarence T. Stonebocker, owner of the Yellowstone service station at Rigby, Idaho, a Remington cash register for $260.00.

36 Some time thereafter (the precise date being unknown to complainant) the defendants Jerome B. Bliss, Norval F. Robbins, and Emanuel B. Peterson (said Peterson being then and there a salesman in said territory for Underwood typewriters) entered into a scheme to induce said Stonebocker, under the pretense that his said Remington cash register would not operate properly, to refuse to make his payments upon the purchase price of said cash register, return it to the Remington Cash Register Company, and to purchase a National cash register. In pursuance of the understanding between said defendants each of them did, from time to time, visit said Stonebocker, make remarks derogatory of Remington cash registers, and advise him to return it to the Remington Cash Register Company, some of said statements being, in substance, that Remington cash registers were rotten, that every Remington cash register placed by the Remington salesmen in that territory had given trouble, and

made other remarks of a similar nature respecting Remington cash registers.

Complainant avers that by reason of the reluctance and unwillingness of the said Clarence T. Stonebocker to state the times of said visits, and the statements made by said defendants to him upon those occasions—said Stonebocker, apparently, to a certain extent consenting to said scheme—it is not possible to set forth in detail, but only in a general way, the times of such visits and the nature and
37 substance of the statements so made to said Stonebocker by said defendants respecting Remington cash registers.

As a result of these visits to Stonebocker by said defendants, and of the false and the unfair statements so made to him, said Stonebocker, some time in August, 1923, signed a contract with the defendants Bliss and Robbins for the purchase of a National cash register, but the National Cash Register Company having been advised of the facts refused to approve the sale of such register.

Thereafter, in furtherance of said scheme, on or about December 1, 1923, the defendant Robbins again visited said Stonebocker, and it was then agreed between the said Robbins and said Stonebocker and one C. C. Christensen, then in the employ of said Stonebocker, that said Robbins would sell to said Stonebocker, in the name of said Christensen, a National cash register, which said Robbins then and there did, the understanding then being that said Stonebocker would receive and pay for said National cash register.

That said 1,000-line "Knocker" National cash register, so then sold to said Stonebocker in the name of C. C. Christensen, was received by said Stonebocker on or about February 6, 1924, and payments made thereon by said Stonebocker.

And thereupon, in pursuance of said agreement said Stonebocker shipped his said Remington cash register to the Remington Cash Register Company at Salt Lake City, on December 13, 1923, which said cash register was returned to said Stonebocker at Rigby, Idaho, on or about February 6, 1924.

38 Some time in January or February, 1924, E. R. Guyman, then a salesman for Remington cash registers in said territory, called on said Stonebocker at Rigby, Idaho, in an effort to adjust the trouble with respect to the Remington cash register, which said Stonebocker had so returned to the Remington Cash Register Company at Salt Lake City. As a result of his visit, said Stonebocker agreed to carry out his contract, said Guyman then leaving with said Stonebocker for his present use a loaned Remington cash register.

Returning shortly thereafter, said Guyman was advised by said Stonebocker that said defendant Bliss had in the meantime been to see him and had again, by means of the false and unfair statements, discouraged his carrying out his contract for said Remington cash register. Thereupon said Guyman at once drove to Pocatello, got a new Remington cash register, for which said Stonebocker

signed a new contract on March 18, 1924, the old Remington cash register being returned to the Remington Company.

After the installation of said new Remington cash register by said Stonebocker on March 18, 1924, the defendants Jerome B. Bliss, Norval F. Robbins, and Emanuel B. Peterson renewed their visits to Stonebocker in their efforts to induce him to cancel his contract for said Remington cash register. As a result of these visits the said Stonebocker refused to make further payments upon the purchase price of his Remington cash register so purchased by
39 him on March 18, 1924, and the same was retaken by said Remington Cash Register Company about October 1, 1924.

And in furtherance of said scheme and as a part of it, to which said Stonebocker was not an unwilling party, the said defendants, having so induced said Stonebocker to refuse to make payments upon his last-purchased Remington cash register, on or about August 6, 1924, sold to one E. J. Hill, for said Stonebocker, a 1,000-line "Knocker" National cash register, which said cash register was received by said Stonebocker on or about September 2, 1924, the purpose of making the contract for said National cash register in the name of E. J. Hill being to cover up the scheme and plan of said defendants and to make it appear that said Stonebocker had not purchased a National cash register.

All of said scheme and plan and statements of the defendants Bliss and Robbins, as aforesaid, being in willful violation of paragraphs A and K of said decree.

(b) About the month of August, 1923, Ray Mark, owner of Mark Brothers' service station, Twin Falls, Idaho, purchased through a Remington salesman a Remington cash register.

About the month of October, 1923 (the precise date being unknown to complainant), the defendants Jerome B. Bliss and Norval F. Robbins called at the place of business of said Ray Mark and without stating who they were then and there stated to said Mark, in substance:
40 "Where did you get that tin thing?" referring to his Remington cash register, which he then had in use in his said place of business, and then rapping the sides of said cash register further stating that said cash register was made out of tin, while National cash registers were strong and heavily constructed, and also then and there further stating, in substance, "Who will repair it (meaning his Remington cash register) when it goes bad? It is against the law for any National mechanic to touch it or repair it" and that the National Cash Register Company was the only company that had service men on the road who could repair their registers.

And also then and there further stating to said Mark that in every town they visited the parties who had Remington cash registers were taking them out and replacing them with National cash registers.

That remarks of the character of those described, derogatory of Remington cash registers, were kept up by said defendants Bliss

and Robbins for nearly an hour, until finally said Mark, becoming angry, stated to them that he did not care to hear any more talk of that character in his place of business.

That said statements so made by the defendants Jerome B. Bliss and Norval F. Robbins, derogatory of Remington cash registers, were willfully made for the purpose of trying to discredit said cash registers with a view to inducing said Mark to cancel his contract for it and to purchase a National cash register, and all of which was in willful violation of paragraphs A and K of said decree.

41 Defendants Jacob A. Goldman, Wilbur J. Long

The defendants Jacob A. Goldman and Wilbur J. Long, during the several times they did the unfair things and made the false and unfair statements respecting Remington cash registers, as now here charged, were salesmen at New Orleans, La., for National cash registers (under the authority of J. A. McLane, sales agent) for the National Cash Register Company.

(c) On or about October 16, 1924, J. D. LeBlanc, a merchant whose place of business is at 2401 Robert St., New Orleans, La., purchased through a Remington salesman a Remington cash register.

That a short time thereafter (the precise date being unknown to complainant) and several times thereafter the defendant Jacob A. Goldman called at the place of business of said LeBlanc, and upon being advised by said LeBlanc that he had purchased the Remington cash register then in his place of business said Goldman then and there stated, in substance, to said LeBlanc, that he had made a mistake in purchasing his Remington cash register, and proposed to said LeBlanc that he, said Goldman, would return to said LeBlanc the initial payment of $25.00 if he would return his Remington cash register and purchase a National cash register, which offer said LeBlanc refused.

Becoming tired of the repeated calls of said Goldman, in his efforts to induce him to cancel his contract for his Remington cash register, said Brennan finally asked said Goldman not to call again.

All of which conduct, calls, and statements made by said Goldman upon and to said LeBlanc were made for the purpose of trying to induce him to break his contract for his Remington cash register and to purchase a National, and all in willful violation of paragraphs A and K of said decree.

42 (e) On or about May 9, 1923, Morris Lakowisky, owner of a drug store at 632 Canal St., New Orleans, La., purchased through a Remington salesman a Remington cash register.

Shortly after he had purchased said Remington cash register (the precise date being unknown to complainant) the defendant Jacob A. Goldman called upon said Lakowisky, at his place of business, and then and there, among other things, stated, in substance, to said Lakowisky:

"I know that you bought a Remington register, but I just want to come in and convince you that you made a mistake; that the Rem-

ington Cash Register Company is a new concern; that they do not know anything about the cash-register business"; that he, said Goldman, could not see how the Remington Cash Register Company could possibly last; that it was impossible for that company to give further service, as they did not have the men to do it with; and that he, Lakowisky, would later realize that he had made a mistake in purchasing the Remington register, and that he, Goldman, would make him buy a National cash register.

That he could sell him, Lakowisky, a better cash register made by the National Cash Register Company for less money—for $70.00—and that it was as good a register as the Remington Company could sell, and then and there left circulars respecting National cash registers with said Lakowisky, all of which things were said and done by the said Goldman for the purpose of discrediting Remington cash registers and to induce said Lakowisky to break his contract for his Remington cash register and to purchase a National cash register, and all were in willful violation of paragraphs A and K of said decree.

(f) On or about April 19, 1923, Marco Grisoli, doing business at 3210 Bank Street, New Orleans, La., purchased through a Remington salesman a Remington cash register for $250.00, being allowed $50.00 for an old National register taken in on an exchange.

43 On or about April 23, 1923, the defendant Jacob A. Goldman, with two other salesmen for National cash registers, called on said Grisoli, and upon being advised by said Grisoli that he had purchased of James Cocke and L. Calderone a Remington cash register, said defendant Goldman then and there, among other things, stated, in substance, to said Grisoli:

That said Cocke was not an authorized selling agent for Remington cash registers, and that the order which he had signed for the Remington cash register was not valid, since no money had been paid.

That said Goldman also then and there spoke very disparagingly of Remington cash registers, and pointed out to said Grisoli what he claimed to be weaknesses of Remington cash registers, and then and there stated to said Grisoli if he would cancel his order for his Remington cash register and purchase a National cash register he, said Goldman, would allow him $75.00 for his old National register.

As a result of such false and unfair statements, and such unfair conduct upon the part of said Goldman, he then and there induced said Grisoli to break his contract for his Remington cash register and signed a contract for the purchase of a National cash register.

All of which things so said and done by said Goldman, as above stated, were in willful violation of paragraphs A and K of said decree.

44 Defendants Jacob A. Goldman, Louis J. Desmare

The defendants Jacob A. Goldman and Louis J. Desmare, during the several times they did the unfair things and made the false and unfair statements respecting Remington cash registers, as now here

charged, were salesmen at New Orleans, La., for National cash registers (under the authority of J. A. McLane, sales agent) for the National Cash Register Company.

(a) On or about September 9, 1923, Paul G. Weilbaecher, a druggist at 741 Broad St., New Orleans, La., purchased through a Remington salesman a Remington cash register.

A few days thereafter (the precise date being unknown to complainant) the defendant Jacob A. Goldman came into the place of business of said Weilbaecher, and being then and there advised by said Weilbaecher that he had purchased the Remington cash register then in his place of business then and there stated to said Weilbaecher, in substance, among other things:

That for $225 he could sell him a National cash register that would do the same work as the Remington and give him better service. That the next day after said Goldman had so visited the place of business of said Weilbaecher, as above stated, the defendants Jacob A. Goldman and Louis J. Desmare called at his place of business, and said Desmare then and there, among other things, stated to said Weilbaecher, in substance:

"Why, Paul, I am surprised to see you have bought a Remington. Why did you do it?" To which said Weilbaecher replied that both he and his wife were familiar with the National cash register, since they had owned one, and that they found the Remington cash register much better in every respect.

45 That thereupon said Desmare then stated to said Weilbaecher, in substance, that said Goldman had made a mistake in telling him that the National Cash Register could sell him for $225.00 a cash register that would do the same work and give better service than the Remington register; that he, said Desmare, would sell him a cash register for $100.00 that would do the same work and give much better service than his Remington, provided he could get the Remington salesman, Mr. Calderone, to release him from his contract for the purchase of his Remington cash register and take it back, which offer said Weilbaecher then and there refused.

Thereupon said Desmare further stated to said Weilbaecher, in substance, "You have got a guarantee on that Remington register for one year. But what guarantee have you got that it will last longer than a year?" And that thereupon said Desmare repeated his offer to sell said Weilbaecher for $100.00 a National cash register that would do identically the same work as his Remington and give him much better service, provided Mr. Calderone would take away the Remington cash register so purchased by said Weilbaecher.

All of which things were so said and done by the said Goldman and the said Desmare in willful violation of paragraphs A and K of said decree.

46 Defendant Clem Miner

The defendant Clem Miner, during the times he did the unfair things and made the false and unfair statements respecting Remington cash registers, as now here charged, was a salesman for National

cash registers at Des Moines, Iowa, for the National Cash Register Company.

(a) On or about April 25, 1924, R. L. Faubion and M. L. Thompson, then salesmen for Remington cash registers at Des Moines, Iowa, called at the place of business of C. R. Schilling, a grocer at 23rd and Clark Streets, in said city, for the purpose of trying to sell him a Remington cash register.

While said Faubion and said Thompson were so demonstrating their said Remington cash register to said C. R. Schilling, the defendant Clem Miner, who apparently had been following said Faubion and said Thompson, came into said place of business and without invitation proceeded to criticize Remington cash registers and to extol the merits of National cash registers.

47 In addition to interrupting the demonstration then being made by said Faubion and said Thompson, and to the statements he then made derogatory of Remington cash registers (said statements not being within the knowledge of complainant are not here set forth), said Miner, as a further means of preventing said Schilling from purchasing a Remington cash register, then and there said to said Schilling, in substance, that he would sell him a better and more complete National cash register than the Remington cash register then being demonstrated to said Schilling for the sum of $215.00, plus his old National cash register, which sum was much less than the price of the Remington cash register then being demonstrated to him, and invited said Schilling down to the National cash register office, in said city, where he would show him said cash register.

Shortly thereafter said Schilling did visit said office of the National Cash Register Company in Des Moines for the purpose of seeing the cash register the said Miner offered to sell him for $215.00 and his old cash register, but while there said Miner failed to show said Schilling said cash register, and thereupon said Schilling later purchased said Remington cash register, paying therefor $375.00, he being allowed $75.00 for his old National cash register in the exchange.

That said Miner in so interfering with said salesmen for Remington cash registers, as above stated, and in so offering to sell
48 said Schilling a better National cash register for $215.00, and in making the false and unfair statements respecting Remington cash registers, did so willfully and for the purpose of unfairly trying to prevent said Schilling from purchasing a Remington cash register, and that said Miner, at the time he so offered to sell said Schilling a better National cash register for $215.00, as above stated, had no intention of doing so, all of said acts and conduct of the said Clem Miner being in willful violation of paragraphs B, J, and K of said decree.

(b) On or about April 14, 1924, R. L. Faubion and M. L. Thompson, then salesmen at Des Moines, Iowa, for Remington cash registers, visited the place of business of William E. Henry, a druggist

at 2414 University Avenue, Des Moines, Iowa, for the purpose of trying to sell him a Remington cash register.

While they were demonstrating their Remington cash register to said Henry at their car in front of his place of business in said city, the defendant Clem Miner and another salesman with him, whose name was believed to be Putnam, and who apparently had been spying upon them and following them for the purpose of ascertaining the places and the names of the persons upon whom said Faubion and said Thompson were calling in their efforts to sell Remington cash registers, stopped at the place of business of the said Henry and seeing said Faubion and said Thompson so then demonstrating their said cash register thereupon entered the place of business
49 of said Henry and induced the clerk then at the soda fountain in said place of business to come out to where they were so demonstrating their said cash register to said Henry, and say to said Henry that he was then wanted in his place of business; and said Henry then and there believing that he was wanted, in good faith, in his place of business went back into it, whereupon said Miner and said Putnam then proceeded to try to sell said Henry a National cash register, and said Faubion and said Thompson thereafter were unable to complete their demonstration of their cash register to said Henry.

That said Miner and said Putnam so followed and spied upon said Faubion and said Thompson and so interfered with their said demonstration to said Henry, as above stated, for the purpose of interfering with and preventing them from making sales of Remington cash registers, and especially of interfering with them in their efforts to sell a Remington cash register to said Henry, all of which was in willful violation of paragraphs B, J, and K of said decree.

Defendants Edward H. Schmeiding, Fred I. Schmeiding, William S. Clark

The defendant Edward H. Schmeiding, at the times he did the unfair things and made the false and unfair statements respecting Remington cash registers, as now here charged, was sales agent at Canton, Ohio, for the National Cash Register Company and engaged in selling the cash registers of that company at Canton, Ohio, and the surrounding territory.

The defendants Fred I. Schmeiding and William S. Clark, at the times they did the unfair things and made the false and unfair statements respecting Remington cash registers, as now here charged, were salesmen at Canton, Ohio, for National cash registers (under the authority of the defendant Edward H. Schmeiding) for the National Cash Register Company.

50 Defendant Fred I. Schmeiding

(d) On or about the 3rd day of February, 1924, D. S. Gerber, owner of the "Betty Jane Sweet Shop," 3003 West Tuscarawas St.,

Canton, Ohio, purchased through a Remington salesman a Remington cash register.

Some time thereafter (the precise dates being unknown to complainant), and upon three or four different dates the defendant Fred I. Schmeiding called at the place of business of said Gerber and with full knowledge of the fact that he had purchased and was then using a Remington cash register and did not desire to purchase another cash register then and there, upon such occasions, stated to said D. S. Gerber and to his wife, Mrs. D. S. Gerber, in substance, among other things, that:

Remington cash registers were defective, were no good, and would not render purchasers good service; that the National Cash Register Company was the only company that made a good cash register; that the Remington Cash Register Company was not a reliable company and its guarantee of its registers was of no value; and upon such several visits made other and similar statements derogatory of the Remington Cash Register Company and Remington cash registers, all for the purpose of attempting to discredit said company and its cash registers and to lead said Gerber to believe that his Remington cash register was of but little value, that he had been deceived when he purchased it, and thereby trying to induce him to cancel his contract for his Remington cash register and purchase of said defendant a National cash register, all of which statements by the said Fred I. Schmeiding to the said D. S. Gerber and his wife being false or unfair and in willful violation of paragraphs A and K of said decree.

51 Defendant Chester C. Hixenbaugh

The defendant Chester C. Hixenbaugh, during the times he did the unfair things and made the false and unfair statements respecting Remington cash registers, as now here charged, was a salesman at Pittsburgh, Penna., for National cash registers (under the authority of H. O. Whipple, sales agent) for the National Cash Register Company.

(a) On or about February 9, 1923, Peter E. Yeager, a druggist at 2302 Arlington Avenue, Pittsburgh, Pa., purchased through a Remington salesman a Remington cash register.

Within some two or three weeks thereafter (the precise date being unknown to complainant) the defendant Chester C. Hixenbaugh entered the place of business of said Yeager for the purpose of trying to sell him a National cash register. Being then and there advised by said Yeager that he had purchased a Remington cash register and did not desire another register, said Hixenbaugh then and there, among other things, stated, in substance, to said Yeager:

That the Remington cash register which he had purchased was a piece of "junk," and that he, said Hixenbaugh, could have sold him a better cash register for less money, or one equally as good as the Remington for $75.00 less in price.

That dirt would get into the mechanism of Remington cash registers through the opening around the central detail strip and soon cause the register to become inoperative, due to corrosion of the register, that there was nothing new in the Remington cash register, and that its features had been discarded many years before by the National Cash Register Company, and then and there made to said Yeager other similar statements derogatory of Remington cash registers.

That said statements so made by said Hixenbaugh to said Yeager respecting Remington cash registers, above set forth, were
52 false or unfair, and were made for the purpose of discrediting such cash registers and of leading said Yeager to believe that they were not efficient, and thereby to induce said Yeager to cancel his contract for the purchase of his Remington cash register and to purchase of him, said Hixenbaugh, a National cash register, all in willful violation of paragraphs A and K of said decree.

Defendant Harry L. Dubel

The defendant Harry L. Dubel, at the times he did the unfair things and made the false and unfair statements respecting Remington cash registers, as now here charged, was a salesman at Philadelphia, Penna., for National cash registers (under the authority of John T. Watson, sales agent) for the National Cash Register Company.

(a) On or about September 18, 1923, Morris R. Kerst, owner of a market stand at 822 Reading Terminal Market, Philadelphia, Penna., purchased through a Remington salesman a Remington cash register.

On or about September 21, 1923 (the precise date being unknown to complainant), the defendant Harry L. Dubel called at the place of business of said Kerst for the purpose of trying to sell him a National cash register. Being then and there advised by said Kerst that he had purchased the Remington cash register then in use in his place of business, said Dubel then and there, among other things, stated, in substance, to said Kerst:

That when he purchased his Remington cash register he had got "stuck," that the Remington Cash Register Company had been in business but a year and was not a responsible company, and that Remington cash registers were pieces of junk.

That he, said Dubel, knew of three places where purchasers of Remington cash registers would sell them for 50 cents on the
53 dollar, and that he would have continual trouble with the Remington cash register as long as he kept it.

And also at that time called the attention of said Kerst to a pamphlet showing the various types of National cash registers, and particularly to a cash register known as the 1,000-line "Knocker" register, which he, Dubel, marked, and on which he fixed a price of

$250.00 for which he would sell said cash register to said Kerst, said Kerst having paid $325.00 for his Remington cash register.

That several times thereafter (the precise dates being unknown to complainant) the defendant Dubel called upon said Kerst at his place of business and repeated the statements derogatory of Remington cash registers and of the Remington Cash Register Company herein above set forth.

All of said statements so made by said Dubel to said Kerst, above set forth, were false or unfair and were made for the purpose of discrediting Remington cash registers and of prejudicing said Kerst against them, and by such means trying to induce him to break his contract for the purchase of his Remington cash register and then to purchase of him, said Dubel, a National cash register, all of such acts and statements of the said Dubel being in willful violation of paragraphs A and K of said decree.

54 Defendant Robert J. Kavelage

The defendant Robert J. Kavelage, during the times he did the unfair things and made the false and unfair statements respecting Remington cash registers, as now here charged, was a salesman at Syracuse, New York, and surrounding territory, for National cash registers (under the authority of C. A. Sager, sales agent) for the National Cash Register Company.

(a) For some time prior to July 6, 1923, J. M. Woods and John Weil, conducting a grocery under the firm name of Woods & Weil, at 927 Onondaga Ave., Syracuse, New York, were contemplating the purchase of a cash register. Prior to said date the defendant and the salesman for Remington cash registers had each demonstrated to said Woods & Weil the merits of their respective cash registers.

Having been advised by said Woods & Weil that they had investigated the Remington cash register and were thinking of purchasing one, said Kavelage, upon two different occasions (the precise dates being unknown to complainant), stated to said Woods and to said Weil, in substance, among other things:

That Remington cash registers were not good registers, that he could take them to a large number of places where merchants who had purchased Remington cash registers were dissatisfied with them and were having trouble with them, that dirt would get down through the opening of the detail strip and block the mechanism of the register and render it impossible of operation, as a result of which said Woods became skeptical of Remington cash registers and called on the salesman for Remington cash registers to know if the statements made by said Kavelage were true. Being satisfied with the statements made to them by said Remington salesman, the firm thereupon purchased through said salesman a Remington cash register, which was delivered to them on or about July 6, 1923.

Shortly after the delivery to them of said cash register (the
55 precise date being unknown to complainant) the defendant Kavelage again called at the place of business of said Woods & Weil, and being then advised that they had purchased the Remington cash register then in use in their place of business said Kavelage again, among other things, stated to said Woods and to said Weil, in substance, in addition to the statements he had theretofore made to them derogatory of Remington cash registers:

That it was too bad they had bought the Remington cash register, for he could have gotten them a Remington cash register from a dissatisfied user for the amount of the unpaid balance upon it, and again told them, among other things, that dirt would get down into the mechanism of the register through the opening around the detail strip and block the mechanism of the register so that it would not operate, and that purchasers who had bought them were dissatisfied with them because they would not operate properly, all for the purpose of again attempting to discredit Remington cash registers and thereby dissatisfy said Woods & Weil with their said cash register, so that they would cancel their contract, return their register to the Remington Cash Register Company, and purchase a National cash register of him, said Kavelage, all of which conduct and statements of the said Kavelage being in willful violation of paragraphs A and K of said decree.

(b) On or about July 28, 1922, Frank J. Welch, a grocer at 1427 Milton Avenue, Solvay, New York, purchased through a
56 Remington salesman a Remington cash register, said register being delivered on or about September 20, 1922.

On or about February 8, 1923, the defendant Robert J. Kavelage called at the place of business of said Welch and after being advised by said Welch that he had purchased the Remington cash register then in use in his place of business then and there, among other things, stated, in substance, to said Welch:

That the majority of Remington cash registers did not add properly, and that that was true of no other cash register upon the market.

That Remington cash registers were great accumulators of dust, which entered through the autographic slot in the glass, and that in the course of time this would cause the register to gum up to such an extent that it would become inoperative.

That the flexible keyboard on Remington cash registers was impractical, as it required an expert touch, and that users of Remington cash registers were having serious trouble because the clerks could not be taught this sensitive touch.

That the key on the receiving drum of the detail strip frequently works out and falls down into the mechanism, completely tying up the register and requiring the services of a repairman to put it in working order.

And then and there made other similar statements derogatory of Remington cash registers to said Welch, all for the purpose of
57 trying to discredit such cash registers and thereby to dissatisfy said Welch with his said cash register and to induce him to cancel his contract for his said cash register, return it to the company, and purchase of him, said Kavelage, a National cash register, all of which statements being false or unfair and in willful violation of paragraphs A and K of said decree.

Defendant Harvey S. Crocker

The defendant Harvey S. Crocker, at the times he did the unfair things and made the false and unfair statements respecting Remington cash registers, as now here charged, was a salesman at Boston, Mass., for National cash registers (under the authority of Fred S. High, sales agent) for the National Cash Register Company.

(a) On or about December 8, 1922, Edward J. Morse, owner of a garage at 82 Prentice St., Boston, Mass., purchased through a Remington salesman a Remington cash register, the register being delivered on or about January 24, 1923.

On or about March 1, 1923 (the precise date being unknown to complainant), the defendant Harvey S. Crocker called at the place of business of said Morse and upon seeing therein a Remington cash register then and there, among other things, stated in substance, to said Morse:

"Why in the hell did you buy that thing for?" To which Morse responded that it was a good register and he was satisfied with it, whereupon Crocker replied:

"It is no damn good."

58 That the Remington Cash Register Company was a young concern and could not remain in business long, and then he would be unable to get any service on the register.

That dirt and lint from the detail strip would get into the mechanism and disable the register and that he would probably use it a month.

That if he, said Morse, would send his Remington cash register back to the Remington Cash Register Company he would sell him a National cash register and that all he would lose would be his initial payment on the Remington.

That Morse then asked said Crocker what he would allow him for his Remington register on a purchase of a National cash register, to which said Crocker replied that the Remington cash register did not have much value and that their one object in taking them in trade on a National cash register was to get the Remington cash register off of the market, and also on four or five later occasions said Crocker called at the place of business of said Morse and made similar statements derogatory of Remington cash registers, all of which statements and conduct on the part of said Crocker being for

the purpose of trying to discredit Remington cash registers, to dissatisfy said Morse with his Remington cash register, and thereby to induce him to cancel his contract for his Remington cash register and to purchase of said Crocker a National cash register, and all in willful violation of paragraphs A and K of said decree.

59 (b) On or about March 9, 1923, William W. Volk, then a salesman for Remington cash registers, entered the place of business of William H. Baker and Daniel E. Carroll, then conducting a lunch room at 2376 Massachusetts Ave., Cambridge, Mass., for the purpose of trying to sell them a Remington cash register.

While said Volk was so engaged in making to said Baker and said Carroll a demonstration of his said cash register, the defendant Harvey S. Crocker, who, apparently, had been spying upon the movements of said Volk and following him from place to place as he was engaged in looking for purchasers of his cash registers, entered the place of business of said Baker and said Carroll, and without invitation interrupted said demonstration and proceeded to take part therein and to make remarks to said Baker and said Carroll derogatory of Remington cash registers, then and there saying to them, in substance, among other things:

That if they, said Baker and said Carroll, purchased a Remington cash register they would be much dissatisfied with it, that Remington cash registers would not stand up, that they were a pile of junk, and that he could take them to a store on Massachusetts Avenue in Cambridge and show them a Remington purchaser who was very much dissatisfied with his Remington cash register, and also then and there made other remarks derogatory of Remington cash registers.

Having revealed his identity, said Volk called the attention
60 of said Crocker to the decree heretofore set out in this complaint and asked said Crocker to leave the store until he, said Volk, had completed his demonstration, which said Crocker did.

Before said Volk had completed his demonstration, as above stated, said Crocker returned and again interfered and renewed his remarks derogatory of Remington cash registers and was again invited to leave the store, which he did.

And said Volk, having then and there sold to said Baker and said Carroll a Remington cash register and received from them a signed order and a cash payment, left their place of business.

As soon as said Volk had left said place of business, the defendant Crocker entered and upon being advised that they, said Baker and said Carroll, had signed a contract for a Remington cash register then and there made to said Baker and said Carroll further remarks derogatory of Remington cash registers, stating, in substance, among other things:

That Remington cash registers were a pile of junk, that they would not stand up, that the adding wheels could be turned back without the use of the master key, that purchasers of Remington cash registers were dissatisfied with them, and then and there offered to repair for

said firm, free of charge, a small National cash register which they had traded in to said Volk as part payment of the purchase price of said Remington cash register if they would purchase a National cash register and stop using the Remington cash register.

61 And thereafter, on at least two occasions (the dates thereof being unknown to complainant), the said Crocker again entered the place of business of said Baker and said Carroll and again repeated the statements above set out derogatory of Remington cash registers.

That the defendant Harvey S. Crocker did the things and made the statements to said Baker and said Carroll, above set out, in the first instance for the purpose of trying to prevent them from purchasing a Remington cash register, and after they had so purchased said cash register of trying to discredit it and to lead them to believe that said cash register was not reliable and was of but little value as a cash register, and thereby to cause them to cancel their contract for their said Remington cash register and to purchase of him, said Crocker, a National cash register, all of said conduct and statements of said Crocker, as above charged, being false or unfair and in willful violation of paragraphs A, B, J, and K of said decree.

(c) On or about March 9, 1923, and upon the date on which he had made his demonstration of a Remington cash register and had sold one to said Wm. H. Baker and Daniel E. Carroll, as set out in paragraph (b), last above set out, said William W. Volk, said salesman for Remington cash registers, after leaving the place of business of said Baker and said Carroll at 2376 Massachusetts Ave., Cambridge, Mass., proceeded to the place of business of one

62 Daniel J. Munyon, at 169 Huron St., Cambridge, Mass., a distance of about two miles from the place of business of said Baker and said Carroll, with whom he had an appointment to demonstrate to said Munyon a Remington cash register.

While he was so engaged on said date in making a demonstration to said Munyon of a Remington cash register, the defendant Harvey S. Crocker, who had been spying upon and following him, said Volk, appeared at the place of business of said Munyon and interrupted said demonstration.

That thereupon said Volk accused said Crocker of following him as he was engaged in trying to sell Remington cash registers, reminded him of the provisions of said decree heretofore set out in this complaint, and asked him to leave the place of business of said Munyon until he, said Volk, had finished his demonstration of his Remington cash register to said Munyon, which he refused to do.

And thereupon said Crocker, in the presence of said Volk, and while said Volk was so demonstrating his Remington cash register to said Munyon, then and there, among other things, stated, in substance, to said Munyon:

That Remington cash registers were mechanically wrong; that they would not stand up; that dirt would get into the mechanism of

the register through the opening in the detail strip and block the mechanism so that the register would not operate; that the Remington Cash Register Company would probably not be selling cash registers within a year and that then a purchaser would be
63 unable to get service if his cash register got out of order, and that he would be unable to get paper for them; and that if he, said Munyon, bought a Remington cash register he would become dissatisfied with it, as he could name several instances where purchasers became dissatisfied with Remington cash registers; and then and there made other similar statements derogatory of Remington cash registers.

That said statements so made by said Crocker to said Munyon respecting Remington cash registers were false or unfair and were made for the purpose of trying to prevent said Munyon from purchasing a Remington cash register in order that he, said Crocker, might sell him a National cash register, all of which conduct and statements of the said Harvey S. Crocker being in willful violation of paragraphs B, J, and K of said decree.

Defendant Charles R. Moore

The defendant Charles R. Moore, at the times he did the unfair things and made the false and unfair statements respecting Remington cash registers, as now here charged, was a salesman at Boston, Mass., and surrounding territory, for National cash registers (under the authority of Fred S. High, sales agent) for the National Cash Register Company.

(a) Some time in June, 1923, Mrs. Mabel J. Stoddard, then owner of a confectionary and bake shop at 8 Central Avenue, Hyde Park, Mass., purchased through Sidney Z. Charak, a Remington salesman, a Remington cash register, which was installed at her place of business by said Charak about July 2, 1923.

While said Charak was so installing said Remington cash register in the place of business of Mabel J. Stoddard, as above stated, the defendant Charles R. Moore entered said place of business and without stating who he was stated, in substance, to said
64 Charak: "Why don't you sell a good register, and why don't you work for a good company?"

And then stated to said Mabel J. Stoddard, in substance, "Why don't you buy a good cash register? I can show you many Remington cash registers that are under the counter and not in use."

And thereupon said Charak, having by that time learned that said Moore was a salesman for National cash registers, then accused said Moore of having, on or about that date, entered the place of business of Cafarella Brothers, then owner of a Remington cash register then in use in their place of business at 21 Fairmont Ave., Hyde Park, Mass., and having then and there stated to said Cafarella Brothers, in substance, among other things:

That a good many people who had bought Remington cash registers were dissatisfied with them, and that of his own personal knowl-

edge he knew several merchants who had bought Remington cash registers and would not use them but were using National cash registers instead and that the Remington cash registers were lying on the floor; and

That it was very easy for money to slip through the opening in the glass on the detail strip of a Remington cash register, thereby falling down into the machinery and putting the register out of commission, and in reply to said accusation said Moore then and there admitted to said Charak, in the presence of said Mabel J. Stoddard, that he had made said statements to said Cafarella Brothers, and that he could make a good many more remarks discrediting Remington cash registers if he wanted to; that he had a right to say anything that was true, and that he could say a great deal more if he wanted to.

And then and there also stated, in substance, to said Mrs. Mabel J. Stoddard:

"I can take you right now to places where I can prove what I say, and if I did you would not want that register in your place," and further, that money would drop through the key slots and block the mechanism and that he could take her to a place at Reedville where a half dollar got in the key slots and locked the cash register, and then and there made other similar statements to her derogatory of Remington cash registers.

That said statements so made by said Moore to said Mrs. Mabel J. Stoddard and to said Charak were false or unfair and were made by said Moore for the purpose of trying to discredit Remington cash registers and thereby to try to induce said Mabel J. Stoddard to cancel her contract for her Remington cash register and to purchase of him, said Moore, a National cash register, all of which statements and conduct of the said defendant Charles R. Moore, above set forth, being in willful violation of paragraphs A and K of said decree.

Wherefore complainant again avers and charges that the several persons named as defendants herein, to wit, Calvin U. Whiffen, Herman Oelschlager, Daniel P. Hendrickson, E. Conant Livingston, E. Murray Aerenschield, Paul G. Boehm, George H. Flaherty, Hugh B. Scott, Herman L. Barker, Alfred D. Evers, Joseph D. Myers, Ralph C. Brown, Leslie Claus, John A. Campbell, Robert A. Morris, Cornelius Penworthy, William B. Rich, John D. Cardall, Herman W. Meyers, Harry A. Barnes, George F. Finnegan, Lemuel E. Bell, George E. Baudrand, Charles S. Fortune, George D. Daum, Arnold L. Wood, Frank A. Grady, Richard Ward, Jack Fogarty, Edward W. Tillson, Stanley E. Stout, George J. McCarthy, William E. Zimmerman, Howard T. Bennett, William C. Bryant, Edmund A. Peiser, Aaron C. Sample, Jerome B. Bliss, Norval F. Robbins, Emanuel B. Peterson, Lester H. Bolte, Leroy Lynch, Thomas W. McCue, Jacob A. Goldman, Wilbur J. Long, Louis J. Desmare, Neven C. Hawthorn, Coman Norton, John T. Collins, John G. Shankle, Goldwin Smith, Clem Miner, Stephen L. Perry, David R. Crandall, Clarence J. Ramspott, Hugh Montgomery, Cletus C. Deardorf, John A. Muldoon, Ray V. Sullivan,

Edward L. Blake, Walter D. Young, Henry C. Cook, Frank E. O'Connor, George A. Baker, Walter M. Stearns, Nathan H. Wetstein, Eugene L. Gleason, Edward H. Schmeiding, Fred. I. Schmeiding, William S. Clark, Harry A. Wackerly, Leo J. McCoy, Marquette Lane, Nathan W. Dubbs, Chester C. Hixenbaugh, John A. Hickey, Harry L. Dubel, Richard J. Brace, Joseph H. Hall, Joseph B. Cummins, Philip J. Seibert, Harlow E. Johnson, Max Peller, John W. Poppenberg, jr., Robert J. Kavelage, Harvey S. Crocker, Charles T. Walsh, Lawton J. Boudreau, Charles R. Moore, Barby G. Welton, Edward T. Balfrey, and Harold V. O'Bryan, severally, have wilfully, wrongfully, and knowingly disobeyed and violated the
67 provisions of the final decree entered by this court on February 1, 1916, in said Equity Cause No. 6802, heretofore herein set forth, in the manner, by the means, and for the purposes, as charged herein; and prays that an order issue from this court upon this information, directing and requiring said defendants, and each of them, to appear before this court at a time to be fixed in said order, to show cause, if any there be, why they should not be attached and brought before the court for hearing and punishment.

That upon the hearing of this information that said defendants and each of them be held and adjudged guilty of contempt of the former order of this court as heretofore herein charged, and that the court impose upon each of them such punishment as to it may seem just and proper, and that the court from time to time will make such further orders herein as may be necessary to carry into effect all judgments and orders entered by this court in this proceeding.

HAVETH E. MAU,
United States Attorney.

WILLIAM D. MITCHELL,
Acting Attorney General.
WILLIAM J. DONOVAN,
Assistant to the Attorney General.
ABRAM F. MYERS,
JAMES A. FOWLER,
JOHN L. LOTT,
Special Assistants to the Attorney General.

68 THE UNITED STATES OF AMERICA,
District of Columbia, ss:

Before me the subscriber, a notary public within and for the District of Columbia, personally came John L. Lott, who, being by me first duly sworn according to law, says that he is a duly appointed, qualified, and acting special assistant to the Attorney General of the United States in the Department of Justice.

That he, by direction of his superior officer, caused a careful investigation to be made by the special agents of the Department of Justice into the charges of the alleged violation, by salesmen and other persons engaged in the sale of National cash registers through-

out the United States for the National Cash Register Company, of the provisions of the final decree entered in the District Court of the United States for the Southern District of Ohio, Western Division, on February 1, 1916, in Equity Cause No. 6802, entitled The United States of America, plaintiff, v. The National Cash Register Company et al., defendants, and especially of the charges that the persons named as defendants in the foregoing information had violated the provisions of said decree.

That the foregoing information is based upon and drafted from the matters and documents set forth in and attached to the reports, made under their oath of office, of the special agents of the Department of Justice charged with the duty of making the investigation ordered to be made in this matter, which information and
69 documents were obtained by said special agents from merchants and other persons having personal knowledge of the matters they so reported to said agents, and which said agents embodied in their several reports to this department.

That he has carefully read all of the reports so made by said special agents to the department in this matter; that he has also carefully read the foregoing information; and that from the knowledge he has thus acquired of the matters and things charged therein he believes that the matters and things severally charged against the several persons named as defendants therein are true.

JOHN L. LOTT.

Sworn to before me and subscribed in my presence this 27th day of October, A. D. 1925.

[SEAL.] CHAS. B. SORNBORGER,
Notary Public, District of Columbia.

70 In United States District Court

[Title omitted.]

Motion for a rule to show cause

Filed Nov. 2, 1925

Now comes the United States of America, complainant, and moves the court for a rule upon the above-named defendants, commanding and requiring them and each of them, on or before a day to be fixed in said rule, to show cause why they and each of them should not be adjudged to be in contempt of this court for having violated the injunction ordered and issued by this court on February 1, 1916, in Equity Cause No. 6802, entitled "The United States of
71 America, plaintiff, v. The National Cash Register Company et al.," then and now pending in this court, and be attached and punished for the same, as prayed in the information filed in this proceeding.

HAVETH E. MAU,
United States Attorney.

72 In United States District Court

[Title omitted.]

Order for a rule to show cause

Nov. 2, 1925

Upon motion of the complainant, and good cause being shown, it is ordered that a rule be issued on the defendants, Calvin U. Whiffen, Herman Oelschlager, Daniel P. Hendrickson, E. Conant Livingston, E. Murray Aerenschield, Paul G. Boehm, George H. Flaherty, Hugh B. Scott, Herman L. Barker, Alfred D. Evers, Joseph D. Myers,
73 Ralph C. Brown, Leslie Claus, John A. Campbell, Robert A. Morris, Cornelius Penberthy, William B. Rich, John D. Cardall, Herman W. Meyers, Harry A. Barnes, George F. Finnegan, Lemuel E. Bell, George E. Baudrand, Charles S. Fortune, George D. Daum, Arnold L. Wood, Frank A. Grady, Richard Ward, Jack Fogarty, Edward W. Tillson, Stanley E. Stout, George J. McCarthy, William E. Zimmerman, Howard T. Bennett, William C. Bryant, Edmund A. Peiser, Aaron C. Sample, Jerome B. Bliss, Norval F. Robbins, Emanuel B. Peterson, Lester H. Bolte, Leroy Lynch, Thomas W. McCue, Jacob A. Goldman, Wilbur J. Long, Louis J. Desmare, Neven C. Hawthorn, Coman Norton, John T. Collins, John G. Shankle, Goldwin Smith, Clem Miner, Stephen L. Perry, David R. Crandall, Clarence J. Ramspott, Hugh Montgomery, Cletus C. Deardorf, John A. Muldoon, Ray V. Sullivan, Edward L. Blake, Walter D. Young, Henry C. Cook, Frank E. O'Connor, George A. Baker, Walter M. Stearns, Nathan H. Wetstein, Eugene L. Gleason, Edward H. Schmeiding, Fred I. Schmeiding, William S. Clark, Harry A. Wackerly, Leo J. McCoy, Marquette Lane, Nathan W. Dubbs, Chester C. Hixenbaugh, John A. Hickey, Harry L. Dubel, Richard J. Brace, Joseph H. Hall, Joseph B. Cummins, Philip J. Seibert, Harlow E. Johnson, Max Peller, John W. Poppenberg, jr., Robert J. Kavelage, Harvey S. Crocker, Charles T. Walsh, Lawton J. Boudreau, Charles R. Moore, Barby G. Welton, Edward T. Baltrey, and Harold V. O'Bryan, commanding and requiring them and each of them to be and appear before this court, in person or by counsel, in the Federal Building, at Cincinnati, Ohio, on Tuesday, December 15, 1925, at 10 o'clock, a. m., central standard time, to show cause, if any there be, why they and each of them should not be adjudged to be in contempt of the former order of this court for having violated the provisions of the injunction heretofore ordered and issued by this court on February 1, 1916, in Equity Cause No.
74 6802, entitled "The United States of America, plaintiff, v. The National Cash Register Company et als., defendants," then and now pending in this court, and be attached and punished for the same: Provided, That a copy of such rule and of the information filed in this proceeding be served personally upon said defendants on or before November 14, 1925; but with respect to defendants not so served on or before said date that each be and

appear before this court at the place and hour named on or before thirty days after a copy of such rule and of such information shall be served personally upon them.

SMITH HICKENLOOPER,
NOVEMBER 2ND, 1925. *District Judge.*

75 In United States District Court

[Title omitted.]

Plea of not guilty

Filed Feb. 15, 1926

Now comes the defendant Jacob A. Goldman and respectfully enters a plea of "not guilty" to each and all of the charges against him, as contained in the information filed in the above cause.

J. A. GOLDMAN.

NOTE.—The record contains an identical plea of "not guilty" by each of the other defendants in error. These are contained in the record under the following dates: Filed February 15, 1926.—Goldman, Desmare, Miner, Hixenbaugh, Kavelage, Sample, Oelschlager, Crocker, Fogarty, Dubel, Bliss, Livingston, Aerenschield, and Moore. Filed February 17, 1926.—Hendrickson, Flaherty, and Myers. Filed March 27, 1926.—F. I. Schmeiding.

76 In United States District Court

[Title omitted.]

Order to take testimony

Mar. 1, 1926

This day this cause came on to be heard on the question of the taking of testimony herein, and all parties being present by counsel, and the court having given due consideration to the same, it is hereby ordered as follows:

1. That B. M. Colling be, and she hereby is, appointed as a special examiner to take, transcribe, and report to this court such testimony as the parties hereto may desire to offer before her, in the following States: North Carolina, Florida, Louisiana, Texas, Arizona, California, Oregon, Washington, Idaho, Montana, Utah, Colorado, and Nebraska.

2. Said special examiner is hereby authorized and empowered to fix the times and places for hearings, to adjourn the same from time to time, to cause subpœnas and subpœnas duces tecum to be issued for witnesses, to administer oaths to witnesses, and to certify the testimony to the court when transcribed by her.

77 3. The special examiner shall be allowed compensation in an amount to be fixed by the court from time to time, which allowance shall include her actual expenses incurred in the performance of her duties and the charges for transcribing the testimony.

4. That the compensation allowed to said special examiner by the court and the costs and expenses incurred by her and allowed by the court shall in the first instance be paid one-half (½) by the complainant and the other half by or on behalf of the defendants, the final determination of the liability of the parties for the payment thereof to await the judgment of the court.

5. The special examiner is further authorized, at the request of the parties, to furnish them with copies of the testimony taken, the costs and expense thereof to be paid to the special examiner by the party ordering the same and the fees so obtained to be retained by her as additional compensation.

Nothing herein shall prevent any of the parties from offering testimony at the trial of this case before the court, either orally or in the form of documentary evidence. This order is for the purpose of fixing the form and manner of taking testimony to the extent herein shown and shall not otherwise affect the rights of any of the parties hereto.

This cause is continued for hearing before the court until the 15th day of September, 1926.

(Signed) SMITH HICKENLOOPER,
Judge, U. S. District Court, S. D. O.

78 In United States District Court

[Title omitted.]

Order to take testimony

May 14, 1926

It appearing to the court that it will be necessary or desirable to take testimony in the above-entitled cause in States other than those enumerated in the original order filed March 1, 1926, appointing the special examiner and directing the taking of testimony herein:

It is therefore further ordered and adjudged that the present examiner, B. M. Colling, be and she hereby is authorized and directed to proceed to and take testimony in any of the States of the United States in which, upon presentation of counsel, it shall, in the opinion of the special examiner, be desirable so to do, with the same powers and duties enumerated in the original order appointing said special examiner, said original order being hereby made applicable to the entire United States in lieu of the several States originally named.

(Signed) SMITH HICKENLOOPER,
United States District Judge.

79 In United States District Court

[Title omitted.]

Application of special examiner for partial allowance of compensation

Filed Nov. 13, 1926

Comes now B. M. Colling, heretofore the duly appointed, qualified, and acting special examiner in the above-entitled cause, and repre-

sents to the court that agreeable to the former orders of the court she commenced the taking of testimony on or about March 22, 1926, and has continued taking such testimony from time to time thereafter to and including that taken in the city of Los Angeles, California, on or about July 19th; that the taking of said testimony required ninety days' actual travel to various cities in the States of South Carolina, Florida, Louisiana, and Texas on the initial trip, and the States of Iowa, Nebraska, Colorado, Utah, Idaho, Montana, Washington, Oregon, and California on the second trip taken; that said taking of testimony and other duties incident to such examinership required that she withdraw from other reporting services and give up all other means of income for the period commencing March 22, 1926, and ending September 1, 1926; that a complete transcript of said testimony has been prepared and filed with the court and constitutes 1,689 pages, or approximately 4,200 folios, exclusive of index; and that the actual expenses of travel and maintenance on the
80 several journeys have been entirely financed by your examiner in an amount to in excess of $2,000.

Your examiner further represents to the court that it will shortly be necessary to take additional testimony in the Eastern States and in the Central West, and that your examiner has received no allowances of expenses or compensation in connection with her services up to the present time.

Wherefore your examiner prays that, all things considered, the court may make such allowance to her to cover expenses incurred and compensation for services rendered as may be just and reasonable in the premises.

(Signed) B. M. Colling.

[*Duly sworn to by B. M. Colling; jurat omitted in printing.*]

81 In United States District Court

[Title omitted.]

Order as to partial compensation

Nov. 13, 1926

This cause coming on to be heard upon the application of B. M. Colling, heretofore duly appointed, qualified, and acting special examiner in the above-entitled cause, for an allowance of compensation and expenses incident to the performance of her services as such special examiner, and the court being fully advised as to actual expenses of and time spent in travel, the longer time in which she was exclusively engaged in the performance of such services, and the character, length, and reasonable value of the transcript of testimony heretofore filed in court:

It is ordered, that said B. M. Colling, special examiner as aforesaid, be and she hereby is allowed the sum of six thousand five

hundred ($6,500.00) dollars as a partial allowance of final compensation and expenses as aforesaid.

It is further ordered that pending final judgment as to costs in this proceeding, the defendants collectively, or some one for and on their behalf, and the United States of America, as complainant, each pay or cause to be paid to said special examiner one-half of the above-named compensation or the sum of three thousand two
82 hundred and fifty ($3,250.00)), taking her receipt for said payment, such receipts to be filed with the clerk of this court as evidence of such advances of court costs.

(Signed) SMITH HICKENLOOPER,
United States District Judge.

83 In United States District Court

[Title omitted.]

Application of special examiner for partial allowance of compensation

Filed June 7, 1927

Comes now B. M. Colling, heretofore the duly appointed, qualified, and acting special examiner in the above-entitled cause, and represents to the court that in the performance of her duties she has taken and completed three trips for the taking of testimony, namely, a journey to Boston, Springfield, New York, Brooklyn, and Philadephia, commencing on November 28th and ending December 15, 1926; second to Cleveland, Canton, and Columbus, Ohio, commencing on March 20, 1927, and ending on March 26, 1927; and the third to Lexington, Ky., St. Louis, Mo., Cedar Rapids, Iowa, Chicago, Ill., Milwaukee, Wis., Madison, Wis., Lansing, Mich., Detroit, Mich., Pittsburgh, Pa., Syracuse, N. Y., Ilion, N. Y., New York, N. Y., and Brooklyn, N. Y., commencing April 11, 1927, and ending May 3, 1927, an aggregate total of forty-six days; that she has personally financed traveling expenses and maintenance for said journeys and was required to and did expend the total sum of approximately $1,060 for such traveling expenses and maintenance; that she has transcribed and filed with the court complete transcript of
84 the testimony taken on said several trips, aggregating in excess of 2,800 folios, and that she is entitled to reimbursement of expenses, allowance of per diem compensation, and fees for making transcript heretofore filed.

Your applicant represents further that no compensation has been allowed or paid her for the services above enumerated, and therefore prays that the court may make such allowance as may be just and reasonable in the premises.

(Signed) B. M. COLLING.

[*Duly sworn to by B. M. Colling; jurat omitted in printing.*]

85 In United States District Court

[Title omitted.]

Order as to partial compensation

June 7, 1927

This cause coming on to be heard upon the application of B. M. Colling, heretofore duly appointed, qualified, and acting special examiner in the above-entitled cause, for an allowance of compensation and expenses incident to the performance of her services as such special examiner, and the court being fully advised as to actual expenses of and time spent in travel, the longer time in which she was exclusively engaged in the performance of such services, and the character, length, and reasonable value of the transcript of testimony heretofore filed in court:

It is ordered that said B. M. Colling, special examiner as aforesaid, be and she hereby is allowed the sum of four thousand ($4,000.00) dollars as a partial allowance of final compensation and expenses as aforesaid.

It is further ordered that pending final judgment as to costs in this proceeding, the defendants collectively, or someone for and on their behalf, and the United States of America, as complainant, each pay or cause to be paid to said special examiner one-half of the above-named compensation or the sum of two thousand ($2,000.00)
86 dollars, taking her receipt for said payment, such receipts to be filed with the clerk of this court as evidence of such advances of court costs.

(Signed) SMITH HICKENLOOPER,
United States District Court.

87 In United States District Court

[Title omitted.]

Stipulation dismissing bill as to certain defendants and as to taking of evidence

Filed Sept. 28, 1927

It is hereby stipulated by and between the United States of America, the complainant herein, and the attorneys for the defendants herein (other than the defendants Ward and Daum, who have died, and the defendant Seibert, who has not been served with process):

1. That the information herein be dismissed as against all the defendants herein except as against the defendants listed in Exhibit A hereto annexed in respect to the charges specified in said Exhibit A, it being understood that the court has stated to counsel that it would be willing to accept any recommendations of dismissal which the Government might make and that it would waive any

rights which the court might have with respect to disapproving the dismissal of any charges.

2. That no witness that has already been called and examined before the special examiner shall be called unnecessarily for further examination and that the court shall have the right to determine whether the further examination of any such witness is necessary.

88 3. That no further testimony shall be taken by the parties before the special examiner.

Dated September 13, 1927.

THE UNITED STATES OF AMERICA,
By WILLIAM J. DONOVAN,
Assistant to the Attorney General.
EZRA M. KUHNS,
SULLIVAN & CROMWELL,
ROBERT L. NEVIN,
DINSMORE, SHOHL & SAWYER,
Attorneys for said Defendants.

89 EXHIBIT A

List of charges to be tried before Judge Hickenlooper

Defendant	Page	Paragraph	Merchant	Place
Jacob A. Goldman	167	(c)	J. D. LeBlanc	New Orleans, La.
Jacob A. Goldman	169	(e)	LaKowisky	New Orleans, La.
Jacob A. Goldman	170	(f)	Grisoli	New Orleans, La.
Louis J. Desmare	173	(a)	Weilbaecher	New Orleans, La.
Louis J. Desmare	180	(a)	Georgio	New Orleans, La.
Thomas W. McCue	161	(a)	Bennett	Dallas, Texas.
Thomas W. McCue	163	(b)	Parrino	Dallas, Texas.
Clem Miner	190	(a)	Schilling	Des Moines, Iowa.
Clem Miner	192	(b)	Henry	Des Moines, Iowa.
Chester C. Hixenbaugh	242	(a)	Yeager	Pittsburgh, Pa.
Robert J. Kavelage	262	(a)	Woods & Weil	Syracuse, N. Y.
Robert J. Kavelage	263	(b)	Welch	Solvay, N. Y.
Aaron C. Sample	135	(a)	Gisher & Alderson	Birch Bay, Wash.
Herman Oelschlager	39	(d)	Gelsinger	Los Angeles, Cal.
Daniel P. Hendrickson	44	(a)	Gelsinger	Los Angeles, Cal.
Harvey S. Crocker	265	(a)	Morse	Boston, Mass.
Harvey S. Crocker	267	(b)	Baker & Carroll	Cambridge, Mass.
Harvey S. Crocker	269	(c)	Munyon	Cambridge, Mass.
George H. Flaherty	62	(a)	Mrs. Richter	Los Angeles, Cal.
Herman W. Meyers	90	(a)	Ashbourne	Long Beach, Cal.
Herman W. Meyers	93	(a)	Hanna	Long Beach, Cal.
Joseph D. Myers	75	(a)	Marsh	Hollywood, Cal.
Jack Fogarty	115	(a)	Waycott	Stockton, Cal.
Harry L. Dubell	246	(a)	Kerst	Philadelphia, Pa.
George L. Finnegan	97	(a)	Jones	Loma Linde, Cal.
Jerome B. Bliss	141	(a)	Stonebocker	Rigby, Idaho.
Jerome B. Bliss	145	(b)	Mark Bros	Twin Falls, Idaho.
Fred I. Schmeiding	229	(d)	Betty Jane Sweet Shop.	Canton, Ohio.
E. Conant Livingston	50	(b)	Clark	Los Angeles, Cal.
E. Murray Aerenschield	54	(a)	H. S. Springer	Los Angeles, Cal.
Charles S. Fortune	106	(a)	Dawson	Sacramento, Cal.
Charles R. Moore	275	(a)	Stoddard	Hyde Park, Mass.

90 In United States District Court

[Title omitted.]

Motion to dismiss

Filed Nov. 4, 1927

Now come the following defendants and they and each of them respectively moves to dismiss the charge or charges set opposite his name below on the ground that it appears on the face of the information that this proceeding for contempt was instituted more than one year after the date of the alleged act or acts complained of in said charges:

Name	Page	Paragraph	Merchant
Jacob A. Goldman	167	(c)	J. D. Le Blanc.
Jacob A. Goldman	169	(c)	LaKowisky.
Jacob Goldman	170	(f)	Grisoli.
Louis J. Desmare	173	(a)	Weilbaecher.
Clem Miner	190	(a)	Schilling.
Clem Miner	192	(b)	Henry.
Chester C. Hixenbaugh	242	(a)	Yeager.
Robert J. Kavelage	262	(a)	Woods & Weil.
Robert J. Kavelage	263	(b)	Welch.
Aaron C. Sample	135	(a)	Gisber & Alderson.
Herman Oelschleger	39	(d)	Gelsinger.
Daniel P. Hendrickson	44	(a)	Gelsinger.
Harvey S. Crocker	265	(a)	Morse.
Harvey S. Crocker	267	(b)	Baker & Carroll.
Harvey S. Crocker	269	(c)	Munyon.
91 George H. Flaherty	62	(a)	Mrs. Richter.
Joseph D. Myers	75	(a)	Marsh.
Jack Fogarty	115	(a)	Waycott.
Harry L. Dubel	246	(a)	Kerst.
Jerome B. Bliss	141	(a)	Stonebocker.
Jerome B. Bliss	145	(b)	Mark Bros.
Fred I. Schmeiding	229	(d)	Betty Jane Sweet Shop.
E. Conant Livingston	50	(b)	Clark.
E. Murray Aerenschield	54	(a)	H. S. Springer.
Charles S. Fortune	106	(a)	Dawson.
Charles R. Moore	275	(a)	Stoddard.

EZRA M. KUHNS,
SULLIVAN AND CROMWELL,
DINSMORE, SHOHL & SAWYER,
ROBERT R. NEVIN,
Attorneys for Defendants.

92 In United States District Court

[Title omitted.]

Demurrer

Filed Nov. 4, 1927

Now comes the United States of America by Haveth E. Mau, its attorney for the Southern District of Ohio, and by Porter R. Chandler, and by W. Houston Kenyon, jr., special assistants to the Attorney General, and as to a certain motion filed this day in the above-entitled cause by certain of the defendants herein, treating the said motion as a special plea in bar, says that the same and the matters therein contained in manner and form as the same are above pleaded and set forth are not sufficient in law to bar or preclude the United States from prosecuting the said information against the said defendants, or any of them, and that the United States is not bound in law to answer the same, and this the United States is ready to verify.

Wherefore for want of sufficient plea in this behalf the United States prays judgment, and that the said defendants may be further prosecuted, the said motion or plea to the contrary notwithstanding.

HAVETH E. MAU,
United States Attorney.
By HARRY A. ABRAMS,
Assistant United States Attorney.

PORTER R. CHANDLER,
W. HOUSTON KENYON, Jr.,
Special Assistants to the Attorney General.

93 In United States District Court

[Title omitted.]

Upon motion to dismiss and demurrer to motion.

Opinion

HICKENLOOPER, District Judge:

By motion to dismiss certain charges contained in the information in contempt and demurrer to this motion, treating the same as a special plea in bar, counsel have presently raised the question of the statute of limitations, if any, applicable to contempt proceedings, which they had contemplated raising under the plea of not guilty. This involved a consideration of sections 24 and 25 of the Clayton Act (act of October 15, 1914, c. 323, 38 Stat., pp. 730, 739, 740). This act is entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and

before passing to a consideration of sections 24 and 25 it is to be noted that the act in its entirety is a congeries of enactments supplementing existing laws as to several separate and distinct subject-matters. In the case of Sandefur v. Canoe Creek Coal Co., 293 Fed. 379, 380 (C. C. A. 6), the court recognized this fact, saying:

94 "The first eight sections pertain directly to the subject of trusts and monopolies (Comp. St. §§ 8835a–8835h); section 9 (Comp. St. §8602) concerns interstate commerce; section 10 (Comp. St. § 8835i), combinations among common carriers; section 11 (Comp. St. § 8835j), proceedings to enforce certain provisions of the act; sections 12–16 (Comp. St. §§8835k–8835o), antitrust procedure and remedies; sections 17–19 (Comp. St. §§ 1243a–1243c), regulations of injunction and restraining orders in all cases; section 20 (Comp. St. § 1243d) limits the power of an equity court to issue any injunction in a certain class of cases, viz, between employer and the employee; and sections 21–24 (Comp. St. §§ 1245a–1245d) pertain to procedure in any District Court, punishing contemptuous disregard of any order of such court, providing the act constituting contempt is also a criminal offense."

In this case, which is the only one to which we have been referred directly bearing upon the question here involved, section 25 is not allocated or grouped with any other sections as dealing with a distinct subject-matter. Sections 21 to 24, inclusive, are grouped together as dealing with procedure and punishment of contempts of court where the contemptuous act or thing done is of such character as to constitute also a criminal offense under any statute of the United States, or under the laws of any state in which the act was committed. Whether or not section 25 is to be considered as dealing with a separate subject-matter and as applicable, in accordance with its terms, to all contempts as distinguished from those included in the provisions of sections 21 to 24, or, otherwise expressed, whether the words "that nothing herein contained shall be construed to relate to" all other types of contempt, are applicable to section 25 so as to confine the operation of section 25 only to contempts in which the contemptuous act or thing done is also a criminal offense,

95 is the precise question now presented. These two sections as follows:

SEC. 24. That nothing herein contained shall be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced within section twenty-one of this Act, may be punished in conformity to the usages at law and in equity now prevailing.

"SEC. 25. That no proceeding for contempt shall be instituted against any person unless begun within one year from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution for the same act or acts; but nothing herein contained shall affect any proceedings in contempt pending at the time of the passage of this Act."

Both parties to this information in contempt contend for a precisely literal construction of the language used by Congress, the defendants contending that the words "no proceeding for contempt" are all-inclusive and too clear to call for construction by the court; the Government contending that the words "nothing herein contained" refer to all that portion of the Clayton Act which deals with procedure and punishment for contempt, including section 25, and urge in support of this contention that these sections not only appear in the act as finally adopted but also appeared in their respective order in the Clayton contempt bill, which passed the House but failed of passage in the Senate at the Sixty-second Congress. Both contentions are equally logical, for while it appears that sections 21 to 25, inclusive, deal with but a single subject-matter, contempts,
and the procedure to be followed and scope of power in the
96 court to punish for contempt, and the words "nothing herein contained" might therefore well refer to all provisions relating to this separate title or subject-matter in its entirety, it can not be denied, and with equal force, that Congress may well have believed that it was legislating, and intended to legislate, upon two related but distinct subject-matters, both when it passed the Clayton Act and considered its immediate ancestor, the Clayton contempt bill, viz: (1) Procedural regulation, including provision for a jury trial and the fixing of maximum penalty where the contemptuous act was also a criminal offense; and (2) the enactment of a statute of limitations applicable to all contempts. Since sections 21 to 25 of the Clayton Act as passed are carried bodily and verbatim from the original Clayton Contempt Act, where they appeared in the same relative order (section 24 being proposed section 268d and section 25 being proposed section 268e of the Judicial Code), the question of congressional intent, to deal with separate subject-matters or titles of the more general subject of contempts, would arise under the language used in the earlier act as well as that of the later, although in the later act many additional subjects were covered. The ambiguity arises solely from the use of the words "herein contained."

If Congress intended to deal with but one title or subject-matter in sections 21 to 25, inclusive, the language of section 24 limits the scope and application of section 25 to such contempts as were also criminal offenses, a position which might seem, to some extent at
least, to be supported by the clause of section 25 "nor shall any
97 such proceeding be a bar to any criminal prosecution for the same act or acts." If Congress intended to deal with such contempts only in sections 21 to 24, inclusive, and then turned its attention to providing a statute of limitations applicable to all

contempts, a different subject-matter, the words "herein contained" would be applicable only to the provisions of sections 21 to 24, inclusive.

In construing the provisions of this act, neither the committee reports nor the statements made by committee members in charge of the bill, nor by Mr. Clayton, its author, materially assist the court to a determination of this intent. When the Clayton Act was finally reported by the committee (63rd Cong., 2nd sess., H. R. Report No. 627) the report merely pointed out that the contempt sections were repetitions of the bill introduced by Mr. Clayton in the preceding Congress. In the debates in the House Mr. Webb (a member of the Judiciary Committee in charge of the bill) stated, as is provided by present section 24, then section 22, that this section "provides that nothing contained in this bill shall be construed to relate to contempts committed in the presence of the court," etc. In his discussion of the earlier bill, however, Mr. Webb, who then occupied a similar committee position, after discussing section 4 of the Clayton contempt bill, proposed section 268d of the Judicial Code and section 24 of the Clayton Act, made the following statement: "Section 5 or 268e makes the statute of limitations in such cases and in all contempt cases one year from the act complained of." (Cong. Rec., vol. 49, p. 8803.) Nor does the House report of the earlier bill (H. R. No. 613, 62nd Cong., 2nd sess.) throw any light upon our inquiry, for sections 268d and 268e are separately treated, and each is treated as if given literal construction. Thus this committee report provides: "Section 268d excepts from the operation of the act contempts in the presence of the court," etc., and later "section 268e bars proceedings for contempt unless begun within one year from the date of the act complained of * * *." There is thus no limitation as to the scope of application to be given to "proceedings for contempt" and no definition of the meaning of "herein contained"; that is, there is nothing indicative of whether Congress intended to deal with a single or with two subjects.

In the debate on the Clayton contempt bill in the Sixty-second Congress, Mr. Clayton, the author and sponsor of the bill and a member of the committee which reported it, does state that objection had been raised on the ground that the bill would probably detract from the power of the courts to enforce their decrees of dissolution of combinations denounced by the anti-trust law, and continued: "We have met that objection by providing in this bill that it shall not apply in any case where the United States is a party complainant." But here too, as elsewhere, it does not appear whether the objection was founded upon the possibility of requirement of a jury trial and the limitation of penalty, or upon the limitation. (Cong. Rec., vol. 48, pt. 9, p. 8878.) None of these reports or committee-member statements is wholly inconsistent with either contention except the emphatic statement of Mr. Webb as to the Clayton contempt bill, that the statute of limitations in such cases "and in all

contempt cases" is placed at one year. If admissible at all, or helpful in the least, their persuasiveness preponderates in favor of the defendants' contention.

99 The congressional committee reports and debate failing to clearly point out the congressional intent, we are constrained to turn for a determination of this intent to the act itself. No rule of construction is more fundamental than that the congressional intent must be derived from the language used; but where an ambiguity has arisen, as here, the act should be considered in its entirety, and it may be presumed that where the same words which cause the ambiguity are used elsewhere in the act Congress intended all uses to carry the same import. Thus giving simple words their usual or customary meaning, if particularity is shown throughout the act to limit the scope of general provisions wherever an intent to so limit might be doubted, a presumption against intent to limit the effect of a general provision would arise from the very absence of express and explicit limitation.

Sections 17 to 20, inclusive, constitute what had been introduced at the previous session of Congress as the Clayton injunction bill. Sections 21 to 25, inclusive, constituted what, at the previous session, was known as the Clayton contempt bill. Thus sections 17 to 25, inclusive, were of single authorship and were before Congress upon two occasions. They should therefore be examined together in our effort to construe the language used.

When we come to the second paragraph of section 20, we find the scope of its provisions expressly limited to injunctions in labor disputes as distinguished from all restraining orders or injunctions which were dealt with in sections 17 to 19. The scope of this section is carefully defined by the use of the words "no such" restraining order, thus showing intent to particularize or explicitly limit

100 its application. Again, when we come to section 22 we find this same particularity. This section provides that whenever it shall be made to appear that any person has been guilty "of such" contempt (as described in section 21) certain procedure shall be followed. In the second paragraph of this section a jury trial is provided "in all cases within the purview of this act." This has been construed to refer exclusively to contempts embraced in section 21. (Sandefur v. Canoe Creek Coal Co., supra.) By section 23 intent to limit the enactment to contempts which were also criminal offenses is shown by the use of the words "any person so accused." It is only in the third paragraph of section 22 that general language is used which might be applicable to all contempt proceedings. There it is provided that "in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of $1,000, nor shall such imprisonment exceed the term of six months." This is but one instance of the use there of the words "in any case" and probably forms one basis for the addition of section 24. Another reason for the addition of section 24 is clearly that there may be no possible confusion arising from the enactments then under considera-

tion. Assurance is made doubly sure. But this assurance against misinterpretation is most naturally appended at the end of the affected provisions in the usual or ordinary instrument.

Two observations occur from the fact just noted. The first is that there was some definite purpose in adopting the order in which sections 24 and 25 of the Clayton Act appeared both in this act and in the Clayton contempt bill. If section 24 was to have application to section 25, the only natural inclination would be to reverse
101 their order. The other observation is that section 24 is in substance, effect, and true purpose a proviso. Its purpose and effect would have been in no way changed had it begun with the word "provided," as, for example, in the last part of the third paragraph of section 22. The first of these observations tends strongly to show that Congress intended to deal with separate subjects in sections 21 to 24 and section 25. Under the second observation it is clear that exceptions or provisos will be construed as having reference only to that which precedes.

Reverting to our observations as to particularity of expression and care in defining scope and limitation in other parts of the act, including section 24, we find a total absence of any limitation whatever in section 25. "No proceeding for contempt shall be instituted against any person unless begun within one year from the date of the act complained of." The addition of the clause "nor shall any such proceeding be a bar to any criminal prosecution for the same act or acts" is but another example of care against misinterpretation. This clause but makes more glaring the absence of any limitation whatever in the clause immediately preceding. Throughout the act Congress was explicit and most careful in limiting the general language wherever limitation was intended, and we can not believe that if it were intended by section 25 to fix a statute of limitation only for such contempts as formed the subject matter of sections 21 to 24, inclusive, Congress would not have been equally explicit or would not have used appropriate words to express such intent, such words as "no such proceeding," "no proceeding for contempt within the purview of this act," or "no contempt covered by
102 section 21." No such words of limitation are found, and the language of the Supreme Court in the case of McCluny v. Silliman, 3 Pet. 270, 278, also dealing with a statute of limitations, seems applicable to the present case:

"Where the statute is not restricted to particular causes of action, but provides that the action, by its technical denomination, shall be barred, if not brought within a limited time, every cause for which the action may be prosecuted is within the statute. * * * In giving a construction to this statute, where the action is barred by its denomination, the court can not look into the cause of action."

This conclusion that Congress was in fact intending to deal with procedure and punishment of one type of contempts by sections 21 to 24, inclusive, and with the related but different subject of limitations in all classes of contempts in section 25, and that there was no

purpose that section 24 should have any application whatever to section 25, is further emphasized by the fact that the contempts which also constitute criminal offenses comprise but a relatively small portion of all contempts. Section 24 limits the effect "of this act" to this single class and small proportion of contempts. If "the act" is to be considered as sections 21 to 24, by which a new procedure is created, this is a very reasonable limitation, but the act, up to and through section 24, deals with so small a proportion of charges of contempt that we can not believe that if section 25 were intended to relate only to these Congress would not have so expressly stated rather than to have adopted language which includes all of the vastly greater mass. This, we say, emphasizes the position taken.

It is immaterial whether this determination is placed upon the doctrine that the language used in section 25 is so clear as to
103 need no interpretation (see U. S. v. Fisher, 2 Cranch, 358; Michaelson v. U. S., 266 U. S. 42, 68; Railway Co. v. Naylor, 73 O. S. 115, etc.), or upon the doctrine that Congress can not be presumed to have been willing to fix a shorter statute of limitation for this small body or class of contempts which also constitute criminal offenses, and which for that reason may seem more aggravated, than for other contempts of the authority and dignity of the courts (cf. Holy Trinity Church v. U. S., 143 U. S. 457, 472), or upon the doctrine that in sections 21 to 24, inclusive, Congress was dealing with a distinct subject matter and when a consideration of section 25 was reached "regulations of a suit in court no longer employ the mind of the legislature" (U. S. v. Fisher, supra), or upon the doctrine that it is only by so holding that complete and full effect can be given to both section 24 and section 25. All aids to construction but serve to emphasize the conclusion.

It is urged by the Government that the words "herein contained" must refer either to the section, the entire act, or to the title where the act covers more than a single subject-matter. (Cf. May v. Simmons, 4 Fed. 499, 501; Arthur v. Butterfield, 125 U. S. 70, 76; Arthur v. Vietor, 127 U. S. 572, 576.) This hypothesis in no wise conflicts with our present conclusion, for by considering sections 21 to 24, inclusive, as one title and section 25 as another title full force can be given both to the words "nothing herein contained," as referring to its title or part of the act, and to the words "no proceeding for contempt." Except by the adoption of this construction either the scope of section 24 or of section 25 must be changed and limited by judicial construction.

104 It is also said that the United States is entitled to a longer statute of limitations than the ordinary litigant and that this can be accomplished by restricting the application of section 25 to so-called civil contempts or civil contempts in which the contemptuous act also constitutes a criminal offense. It is clear that in ordinary statutes of limitation the sovereign is bound only if the intent to so include the sovereign within the provisions of the statute is specific and expressed. In the instant case, however, it must be

held that Congress had in contemplation the somewhat indistinct difference between civil and criminal contempts. While contempt proceedings have been said to be sui generis (Myers et al. v. U. S., 264 U. S. 95), all contempts are in their nature partly criminal. All are punishable by fine and imprisonment, and part or all of such fines may be paid to the sovereign. All include elements of affront and resistance to the authority and dignity of the court. All are based upon a contemptuous disregard of the courts' decrees or obstruction to the administration of justice. In view of this it is impossible to so limit and restrict this act as to make it applicable only to civil contempts, as the Government contends. Nor can the courts judicially legislate in view of claims of inefficiency or inadequacy in the governmental service, the fact that the Government is slow to learn of contempts or is slower to act, or the fact that governmental action is impeded by departmental regulations and "red tape." All contempts being quasi-criminal in their nature it must be presumed that the intent to include the Government was, in this instance at least, specific.

It might also be objected that if the limitation provided by
105 section 25 is to apply to all contempts this section must be considered as an unconstitutional restriction of the inherent powers of the court. Statutes of limitation are now favored and liberally construed as statutes of repose, and we feel that, even if universally applied, the provisions of section 25 come well within the limits of proper regulation, the propriety and legality of which were recognized in Michaelson v. U. S., supra, p. 66.

By construing sections 21 to 24 on the one hand and section 25 on the other as dealing with separate subjects and section 24 as constituting nothing more nor less than an exception or proviso, and thus as affecting only that which precedes, the scope of all sections is clear and distinct. It is said that the words "herein contained" have never been and can not be construed as meaning "hereinbefore," citing Iasigi v. Iasigi, 161 Mass. 75; Arthur's Executors v. Butterfield, 125 U. S. 70; State ex rel. v. Glenn, 54 Tenn. 472; Arthur's Executors v. Vietor, 127 U. S. 572, 576; Smythe v. Fiske, 23 Wall 374, 381, etc. Granted, however, that the Clayton Act is, as we have said, a congeries or aggregation of a number of separate enactments, and that sections 21 to 24, inclusive, constitute the whole of one of these enactments or a single subject matter, the decision herein announced in no wise conflicts with the doctrine of the cases cited. With regard to those sections which had previuosly comprised the Clayton injunction bill (§§ 17 to 20), it is manifest that Congress dealt with two separate and distinct subjects, (1) the granting of preliminary restraining orders and injunctions in all cases and (2) a definition (perhaps merely declaratory of the common law) of the
right of the courts to grant injunctions in cases involving labor
106 disputes. It is not any more unreasonable to conclude that in the Clayton contempt bill, incorporated into the Clayton Act,

sections 21 to 25, inclusive, Congress was also dealing with two subjects. Each original bill covered two different and distinct matters.

Jealous as all courts are of their dignity and of obedience to their lawful decrees, and zealous as all courts must be for the protection of the force and inviolability of their authority, we have irresistibly come to this conclusion upon careful study of the act and the authorities cited. Notwithstanding a natural inclination to punish disobedience of our orders if, and when called to our attention, we feel constrained to overrule the demurrer to the motion to dismiss or special plea in bar for the reasons hereinabove stated. The demurrer being overruled and, in our opinion, the special plea in bar stating a good defense of the running of the statute of limitations, it follows that the several charges which show upon their face that such statute has run must be dismissed, and order may be drawn accordingly.

November 29th, 1927.

(Signed) SMITH HICKENLOOPER,
U. S. District Judge.

For the Government:
PORTER R. CHANDLER and
W. H. KENYON, Jr.,
Special Assistants to the Attorney General.

For the defendants:
ROBERT R. NEVIN,
Of Nevin & Kalbfus, Dayton, Ohio.
EZRA M. KUHNS, *Dayton, Ohio.*
FRANK F. DINSMORE,
Of Dinsmore, Shohl & Sawyer, Cincinnati, Ohio.
E. H. SYKES and
E. H. GREEN,
Of Sullivan & Cromwell, New York, N. Y.

107 In United States District Court

[Title omitted.]

Judgment

Dec. 2, 1927

This cause coming on to be heard on the motion heretofore, to wit, on November 4, 1927, filed by the defendants and each of them hereinafter named, and the demurrer to said motion filed on said fourth of November, 1927, by the United States of America, complainant herein, the court having heard the arguments of counsel and being fully advised in the premises, on consideration thereof does find:

First. That the demurrer is not well taken and should be overruled.

Second. That said motion is well taken and should be sustained, in that the statute of limitations constitutes a bar to the further prosecution of the charges hereinafter set forth.

It is therefore ordered, adjudged, and decreed by the court that the demurrer filed by complainant herein on November 4, 1927, to the motion of the respective defendants herein filed on said date be and the same is hereby overruled; and it is further ordered, adjudged, and decreed that the motion filed by the certain defendants named in said motion on November 4, 1927, be and the same is hereby sustained, except as to defendant Charles S. Fortune; that the information be and the same is hereby dismissed as to the following-named defendants, and each of them respectively, so far as relates to charges hereinafter specifically set forth, to wit:

108 Defendant	Page	Paragraph	In the matter of—
Jacob A. Goldman	167	(c)	J. D. Le Blanc.
Jacob A. Goldman	169	(e)	LaKowisky.
Jacob Goldman	170	(f)	Grisoli.
Louis J. Desmare	173	(a)	Weilbaecher.
Clem Miner	190	(a)	Schilling.
Clem Miner	192	(b)	Henry.
Chester C. Hixenbaugh	242	(a)	Yeager.
Robert J. Kavelage	262	(a)	Woods & Weil.
Robert J. Kavelage	263	(b)	Welch.
Aaron C. Sample	135	(a)	Gisher & Alderson.
Herman Oelschleger	39–	(d)	Gelsinger.
Daniel P. Hendrickson	44	(a)	Gelsinger.
Harvey S. Crocker	265	(a)	Morse.
Harvey S. Crocker	267	(b)	Baker & Carroll.
Harvey S. Crocker	269	(c)	Munyon.
George H. Flaherty	62	(a)	Mrs. Richter.
Joseph D. Myers	75	(a)	Marsh.
Jack Fogarty	115	(a)	Waycott.
Harry L. Dubel	246	(a)	Kerst.
Jerome B. Bliss	141	(a)	Stonebocker.
Jerome B. Bliss	145	(b)	Mark Bros.
Fred I. Schmeiding	229	(d)	Betty Jane Sweet Shop.
E. Conant Livingston	50	(b)	Clark.
E. Murray Aerenschield	54	(a)	H. S. Springer.
Charles R. Moore	275	(a)	Stoddard.

All questions of costs are hereby continued for further consideration of the court.

To all of which the United States, by its counsel, hereby excepts.

Enter.

(Signed) SMITH HICKENLOOPER,
U. S. District Judge.

109 In United States District Court

[Title omitted.]

Order withdrawing motion to dismiss as to defendant Charles S. Fortune

Dec. 2, 1927

By agreement of the parties hereto, and with the approval of the court, the motion heretofore, to wit, on November 4, 1927, filed,

wherein it is moved by certain defendants that certain charges contained in the information, as in said motion set forth, be dismissed for the reason that it appears on the face of the information that this proceeding for contempt was instituted more than one year after the date of the alleged act or acts complained of in said charge, is hereby withdrawn in so far as it relates to the defendant Charles S. Fortune. (Information, page 106, paragraph (a); merchant, Dawson.)

Said motion is withdrawn in so far as said defendant Fortune is concerned for the reason that it does not appear affirmatively upon the face of the information that the alleged act or acts complained of in said charge were committed more than one year prior to the date this proceeding for contempt was instituted.

Enter.

HICKENLOOPER, *J.*

Approved:
PORTER R. CHANDLER,
Special Assistant to the Attorney General.

Approved:
EZRA M. KUHNS,
FRANK F. DINSMORE,
ROBERT R. NEVIN,
SULLIVAN & CROMWELL,
Attys. for Deft. Fortune.

110 In United States District Court

[Title omitted.]

Petition for writ of error

Filed Dec. 28, 1927

Now comes the United States of America, by Haveth E. Mau, its attorney for the Southern District of Ohio, and complains that in the record of proceedings had in this cause and in the decision and judgment over-ruling the demurrer interposed by the United States of America to the so-called motion, which was in fact a special plea in bar, filed on behalf of the several defendants set forth in the schedule hereto annexed, with respect to the charges set forth in said schedule, and in sustaining said motion or plea and in dismissing the information as to the several defendants and charges set forth in said schedule, the District Court of the United States for the Southern District of Ohio has committed manifest error, as more fully appears in the assignments of error herewith submitted.

The United States of America therefore respectfully prays
111 for the allowance of a writ of error and for such orders and processes as may cause said error to be corrected by the Supreme Court of the United States.

Dated December 28, 1927.

HAVETH E. MAU,
United States Attorney.
PORTER R. CHANDLER,
Special Assistant to the Attorney General.

Service of a copy of the above petition for writ of error with accompanying schedule is hereby acknowledged on behalf of the several defendants set forth in said schedule this 24 day of December, 1927.

SULLIVAN & CROMWELL,
DINSMORE, SHOHL & SAWYER,
EZRA M. KUHNS,
R. R. NEVIN,
Attorneys for Defendants.

112 *Schedule*

Defendant	Page of information	Paragraph of information	In the matter of—
Jacob A. Goldman	167	(c)	J. D. Le Blanc.
Jacob A. Goldman	169	(e)	LaKowisky.
Jacob Goldman	170	(f)	Grisoli.
Louis J. Desmare	173	(a)	Weilbaecher.
Clem Miner	190	(a)	Schilling.
Clem Miner	192	(b)	Henry.
Chester C. Hixenbaugh	242	(a)	Yeager.
Robert J. Kavelage	262	(a)	Woods & Weil.
Robert J. Kavelage	263	(b)	Welch.
Aaron C. Sample	135	(a)	Gisher & Alderson.
Herman Oelschlager	39	(d)	Gelsinger.
Daniel P. Hendrickson	44	(a)	Gelsinger.
Harvey S. Crocker	265	(a)	Morse.
Harvey S. Crocker	267	(b)	Baker & Carroll.
Harvey S. Crocker	269	(c)	Munyon.
George H. Flaherty	62	(a)	Mrs. Richter.
Joseph D. Myers	76	(a)	Marsh.
Jack Fogarty	115	(a)	Waycott.
Harry L. Dubel	246	(a)	Kerst.
Jerome B. Bliss	141	(a)	Stonebocker.
Jerome B. Bliss	145	(b)	Mark Bros.
Fred I. Schmeiding	229	(d)	Betty Jane Sweet Shop.
E. Conant Livingston	50	(b)	Clark.
E. Murray Aerenschield	54	(a)	H. S. Springer.
Charles R. Moore	275	(a)	Stoddard.

113 In United States District Court

[Title omitted.]

Assignments of error

Filed Dec. 28, 1927

Now comes the United States of America, by Haveth E. Mau, its attorney for the Southern District of Ohio, and says that in the decision and judgment of the District Court of the United States for the Southern District of Ohio, heretofore entered on December 2, 1927, in the above-entitled proceeding, said District Court erred in the following particulars:

1. In overruling the demurrer interposed by the United States to the so-called motion, which was in fact a special plea in bar, filed on November 4, 1927, on behalf of certain of the defendants herein with respect to certain charges in the information (said defendants and charges being set forth in the schedule annexed hereto).

2. In sustaining the so-called motion, which was in fact a special plea in bar, filed on November 4, 1927, on behalf of certain
114 of the defendants herein with respect to certain of the charges in the information (said defendants and charges being set forth in the schedule annexed hereto).

3. In dismissing the information herein as to the several defendants and with respect to the several charges set forth in the order of said court, filed on December 2, 1927 (said defendants and charges being the same as those set forth in the schedule annexed hereto).

4. In holding, as it did, in overruling said demurrer and in sustaining said so-called motion or plea that the period of limitation applicable to the several charges pending against the several defendants set forth in the schedule annexed hereto was one year, and in not holding that the period of limitation applicable to said defendants and said charges was three years.

The United States of America, plaintff in error, therefore prays that the decision aforesaid and the order and judgment entered therein may be reversed, and that the United States may further prosecute the information herein against the several defendants with respect to the several charges set forth in said order and judgment (being the same defendants and charges as are set forth in the schedule annexed hereto).

Dated December 28, 1927.

HAVETH E. MAU,
United States Attorney.
PORTER R. CHANDLER,
Special Assistant to the Attorney General.

115 Service of a copy of the above assignments of error, with the schedule thereto annexed, is hereby acknowledged on behalf of each of the defendants named in said schedule, this 24th day of December, 1927.

SULLIVAN & CROMWELL,
DINSMORE, SHOHL & SAWYER,
EZRA M. KUHAS,
R. R. NEVIN,
Attorneys for Defendants.

116 *Schedule*

Defendant	Page of information	Paragraph of information	In the matter of—
Jacob A. Goldman	167	(c)	J. D. Le Blanc.
Jacob A. Goldman	169	(c)	LaKowisky.
Jacob Goldman	170	(f)	Grisoli.
Louis J. Desmare	173	(a)	Weilbaecher.
Clem Miner	190	(a)	Schilling.
Clem Miner	192	(b)	Henry.
Chester C. Hixenbaugh	242	(a)	Yeager.
Robert J. Kavelage	262	(a)	Woods & Weil.
Robert J. Kavelage	263	(b)	Welch.
Aaron C. Sample	135	(a)	Gisher & Alderson.
Herman Oelschlager	39	(d)	Gelsinger.
Daniel P. Hendrickson	44	(a)	Gelsinger.
Harvey S. Crocker	265	(a)	Morse.
Harvey S. Crocker	267	(b)	Baker & Carroll.
Harvey S. Crocker	269	(c)	Munyon.
George H. Flaherty	62	(a)	Mrs. Richter.
Joseph D. Myers	76	(a)	Marsh.
Jack Fogarty	115	(a)	Waycott.
Harry L. Dubel	246	(a)	Kerst.
Jerome B. Bliss	141	(a)	Stonebocker.
Jerome B. Bliss	145	(b)	Mark Bros.
Fred I. Schmeiding	229	(d)	Betty Jane Sweet Shop
E. Conant Livingston	50	(b)	Clark.
E. Murray Aerenschield	54	(a)	H. S. Springer.
Charles R. Moore	275	(a)	Stoddard.

117 In United States District Court

[Title omitted.]

Order allowing writ of error

Dec. 28, 1927

This 28th day of December, 1927, came the United States of America, complainant herein, by its attorneys, and filed herein and presented to the court its petition praying for the allowance of a writ of error and assignments of error intended to be urged by it, praying also that a transcript of record and proceedings and papers on which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such

other and further relief may be had as may be proper in the premises.

On consideration whereof the court does allow the writ of error as prayed for by the complainant to permit the judgment and decision of this court in the above-entitled cause to be reviewed by the Supreme Court of the United States.

(Signed) SMITH HICKENLOOPER,
Judge, U. S. District Court, S. D. O.

118 Service of a copy of the above order is hereby acknowledged on behalf of all defendants in error this 28th day of December, 1927.

E. M. KUHNS,
R. R. NEVIN,
SULLIVAN & CROMWELL,
DINSMORE, SHOHL & SAWYER,
Counsel for Defendants in Error.

119 In United States District Court

[Title omitted.]

Motion for order as to filing of testimony

Filed Jan. 19, 1928

Now come certain of the defendants in this cause as follows, to wit:

Defendant	Page	Paragraph	In the matter of—
Jacob A. Goldman	167	(e)	J. D. Le Blanc.
Jacob A. Goldman	169	(e)	LaKowisky.
Jacob A. Goldman	170	(f)	Grisoli.
Louis J. Desmare	173	(a)	Weilbacher.
Clem Miner	190	(a)	Schilling.
Clem Miner	192	(b)	Henry.
Chester C. Hixenbaugh	242	(a)	Yeager.
Robert J. Kavelage	262	(a)	Woode & Weil.
Robert J. Kavelage	263	(b)	Welch.
Aaron C. Sample	135	(a)	Gisher & Alderson.
Herman Oelschleger	39–	(d)	Gelsinger.
Daniel P. Hendrickson	44	(a)	Gelsinger.
Harvey S. Crocker	265	(a)	Morse.
Harvey S. Crocker	267	(b)	Baker & Carroll.
Harvey S. Crocker	269	(c)	Munyon.
George H. Flaherty	62	(a)	Mrs. Richter.
Joseph D. Myers	75	(a)	Marsh.
Jack Fogarty	115	(a)	Waycott.
Harry L. Dubel	246	(a)	Kerst.
Jerome B. Bliss	141	(a)	Stonebocker.
Jerome B. Bliss	145	(b)	Mark Bros.
Fred I. Schmeiding	229	(d)	Betty Jane Sweet Shop.
E. Conant Livingston	50	(b)	Clark.
E. Murray Aerenschield	54	(a)	H. S. Springer.
Charles R. Moore	275	(a)	Stoddard.

d move the court that an order be entered upon the journal of the urt of the filing with the court of the testimony taken herein by e special examiner appointed pursuant to the orders of the court tered on March 1, 1926, and May 14, 1926, including the testimony ken by the said special examiner against the defendants herein named in respect to the said charges above stated, and that 0 said order be made nunc pro tunc as of the dates of the filing of said testimony. This motion is based upon the following ounds, to wit:

1. The records kept by the special examiner show that volume of the testimony taken, including pages 1 to 387, inclusive, was ed with the court on April 30, 1926; that volumes 2, 3, and 4, ges 388 to 1689, inclusive, taken by the special examiner, we.e ed on August 25, 1926, with the court; that volume 5 of the testi- ony taken before the special examiner, pages 1689 to 2280, inclu- e, was filed with the court on January 8, 1927; that volume 6 of e testimony taken before the special examiner, including pages 81 to 3050, inclusive, was filed with the court on May 31, 1927.

2. That the said testimony so taken and filed with the court on d dates included testimony in respect to each of the above-named fendants and each of the above-named charges.

3. That the application of the special examiner filed in the clerk's ice of this court on November 13, 1926, for the partial allowance compensation states that at that time 1,689 pages of testimony, proximately 4,200 folios, had been taken before the special exami- r and filed with the court; that on said November 13, 1926, the urt made an entry on the journal in this cause stating that the d testimony had been filed in court.

4. The application of the special examiner for partial allowance compensation filed on June 7, 1927, states that 2,800 folios of timony had been taken and filed with the court, and the entry de by the court on said day, as appears from the journal, states t said testimony was filed in court.

5. That no entry was made on the journal of the court of the ng of the said testimony on April 30, 1926, August 25, 1926, Janu- 8, 1927, and May 31, 1927, through inadvertence, and that an der should now be made nunc pro tunc as of those dates.

6. That the six volumes of testimony filed with the court, as herein stated, were through inadvertence not marked "Filed" by the clerk of the court, and that said volumes should now be marked "Filed" nunc pro tunc as of said dates.

EZRA M. KUHNS,
ROBERT R. NEVIN,
SULLIVAN & CROMWELL,
DINSEMORE, SHOHL & SAWYER,
Attorneys for said Defendants.

122 In United States District Court

[Title omitted.]

Order as to filing testimony

Jan. 19, 1928

This day this cause came on to be heard on the motion of certain defendants as follows, to wit:

Defendant	Page	Paragraph	In the matter of—
Jacob A. Goldman	167	(c)	J. D. Le Blanc.
Jacob A. Goldman	169	(e)	LaKowisky.
Jacob Goldman	170	(f)	Grisoli.
Louis J. Desmare	173	(a)	Weilbacher.
Clem Miner	190	(a)	Schilling.
Clem Miner	192	(b)	Henry.
Chester C. Hixenbaugh	242	(a)	Yeager.
Robert J. Kavelage	262	(a)	Woods & Weil.
Robert J. Kavelage	263	(b)	Welch.
Aaron C. Sample	135	(a)	Gisher & Alderson.
Herman Oelschleger	39	(d)	Gelsinger.
Daniel P. Hendrickson	44	(a)	Gelsinger.
Harvey S. Crocker	265	(a)	Morse.
Harvey S. Crocker	267	(b)	Baker & Carroll.
Harvey S. Crocker	269	(c)	Munyon.
George H. Flaherty	62	(a)	Mrs. Richter.
Joseph D. Myers	75	(a)	Marsh.
Jack Fogarty	115	(a)	Waycott.
Harry L. Dubel	246	(a)	Kerst.
Jerome B. Bliss	141	(a)	Stonebocker.
Jerome B. Bliss	145	(b)	Mark Bros.
Fred I. Schmeiding	229	(d)	Betty Jane Sweet Shop.
E. Conant Livingston	50	(b)	Clark.
E. Murray Aerenschield	54	(a)	H. S. Springer.
Charles R. Moore	275	(a)	Stoddard.

for an order nunc pro tunc of the filing of the evidence heretofore taken by the special examiner appointed by this court on March 1, 1926, and May 14, 1926, including the testimony taken against the above-named defendants in respect to the above-named charges, and counsel for the complainant, the United States of America, and said defendant, being present in open court, the said motion was heard by the court. On consideration whereof the court

123 finds that volume 1 of the testimony, including pages 1 to 387, inclusive, was taken before said special examiner during the pendency of said cause and in preparation for and in anticipation of the trial in open court of said contempt proceedings. Said transcript was completed by the special examiner on April 30, 1926, and then lodged with the judge of this court; that volumes 2, 3, and 4 of said testimony, pages 388 to 1689, inclusive, similarly

ken in anticipation of trial and in preparation therefor, were dged with such judge of this court on April 25, 1926; that volume pages 1689 to 2280, inclusive, similarly taken in anticipation of nd preparation for trial in open court, was lodged with such judge f this court January 8, 1927; that volume 6, pages 2281 to 3050, nclusive, similarly taken in preparation for and anticipation of the ial in open court, was lodged with such judge of this court on May 1, 1927; that said volumes of testimony were all of the testimony ken before the special examiner under said orders of court and ncluded the testimony in reference to the above-named defendants nd the above-named charges; that court and counsel understood at said testimony was so lodged with the judge of this court in s official capacity and pending trial of said charges in open court, which trial either the defendants or the Government should e privileged to introduce additional testimony and to rely for rosecution or defense upon such portions of the testimony thereto- re taken, transcribed, and lodged with said judge as might be esired; that proper record of the fact of the taking of such testi- ony and the filing or lodgment thereof with such judge was tended and was not made through inadvertence and oversight, and at said volumes were not marked "Filed" by the clerk of this urt or by said judge.

It is therefore ordered by the court that the motion of said defendants be, and the same is hereby, granted to this extent, 4 that the record shall now show that voluminous testimony was taken from time to time before the special examiner there- fore appointed, which testimony has been transcribed by said ecial examiner and lodged with the judge of this court, as and in e capacity above stated, as follows: Volume 1 of the testimony as lodged with the judge April 30, 1926; volumes 2, 3, and 4 were dged with the judge August 25, 1926; volume 5 was lodged with e judge January 8, 1927; and volume 6 was lodged with the judge ay 31, 1927; that each of said volumes of testimony shall be en- rsed as "Filed with the court pending trial in open court" upon eir above respective dates of filing; and that the clerk of this court , and he is hereby, ordered to make proper minute of said filing lodgment with the judge of this court of said volumes of testimony nc pro tunc, as of the dates on which said volumes were respec- ely lodged with the judge.

SMITH HICKENLOOPER,
United States District Judge, Southern District of Ohio.

125 In United States District Court

[Title omitted.]

Stipulation in reference to the record

Filed Jan. 19, 1928

To HARRY F. RABE,
Clerk for the United States Court for the Southern District of Ohio, Western Division.

It is hereby stipulated between counsel for the respective parties that in making up the record for the Supreme Court of the United States in this cause the following portions of the record to be incorporated in the transcript, as follows, to wit:

1. November 2, 1925. Information in contempt and petition for rule to show cause as per printed copy attached to this stipulation and omitting therefrom the matter stricken out in said attached copy.
2. November 2, 1925. Motion for rule to show cause.
3. November 2, 1925. Order for rule to show cause.
4. February 15, 1926. The plea of "not guilty" entered by defendant Jacob A. Goldman, appending thereto a certificate that a plea of "not guilty" in identical form was filed by each of the defendants in error between February 15, 1926, and March 27, 1926.
5. March 1, 1926. Order appointing special examiner to take testimony.
6. May 14, 1926. Order authorizing special examiner to take further testimony.
7. November 13, 1926. Application of the special examiner for partial allowance of compensation.

126 8. November 13, 1926. Order made by the court allowing partial compensation to the special examiner.

9. June 7, 1927. Application of special examiner for partial allowance of compensation.
10. June 7, 1927. Order of the court allowing partial compensation to the special examiner.
11. September 28, 1927. Stipulation of counsel as filed.
12. November 4, 1927. "Motion" to dismiss charges as against certain defendants based on the statute of limitations. (It is agreed that the use of the term "motion" herein is without prejudice to any of the claims made by the respective parties herein and shall not preclude the respective parties from asserting that such document was not in law a motion.)
13. November 4, 1927. Demurrer to above "motion," treating the same as a special plea in bar.
14. November 29, 1927. Opinion of the court.
15. December 2, 1927. Entry of judgement overruling demurrer and sustaining said "motion."
16. December 2, 1927. Entry withdrawing "motion" as to defendant Charles S. Fortune.

17. December 28, 1927. Petition for writ of error.
18. December 28, 1927. Assignments of error.
19. December 28, 1927. Order allowing writ of error.
20. December 28, 1927. Writ of error.
21. December 28, 1927. Citation to Supreme Court of the United States.
22. January 19, 1928. Motion of certain defendants for a nunc pro tunc order.
23. January 19, 1928. Nunc pro tunc entry of the court upon the above motion in reference to the filing of the testimony taken before the special examiner.

127 24. This stipulation.

In witness whereof this stipulation is signed by counsel for the respective parties this 19th day of January, 1928.

HAVETH E. MAU,
United States Attorney,
W. HOUSTON KENYON, JR.,
Special Assistant to the Attorney General,
Counsel for Complainant.
EZRA M. KUHNS,
ROBERT R. NEVIN,
SULLIVAN & CROMWELL,
DINSMORE, SHOHL & SAWYER,
Counsel for Defendant.

128 In United States District Court

Writ of error

Filed December 23, 1927

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judges of the District Court of the United States for the Southern District of Ohio, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the District Court, before you, or some of you, between the United States of America, complainant, and Jacob A. Goldman, Louis J. Desmare, Clem Miner, Chester C. Hixenbaugh, Robert J. Kavelage, Aaron C. Sample, Herman Oelschlager, Daniel P. Hendrickson, Harvey S. Crocker, George H. Flaherty, Joseph D. Meyers, Jack Fogarty, Harry L. Dubel, Jerome B. Bliss, Fred I. Schmeiding, E. Conant Livingston, E. Murray Aerenschield, and Charles R. Moore, defendants, a manifest error hath happened, to the great damage of the said United States of America, as is said and appears by its complaint:

We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties afore-

said in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, D. C., within thirty days from the date hereof; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States ought to be done.

129 Witness the honorable William H. Taft, Chief Justice of the United States, this 28th day of December, in the year of our Lord one thousand nine hundred and twenty-seven.

[SEAL.] HARRY F. RABE,
Clerk of the District Court of the United States of America for the Southern District of Ohio.

The foregoing writ is hereby allowed.

SMITH HICKENLOOPER,
United States District Judge.

Service of a copy of the above writ of error is hereby admitted on behalf of all defendants in error this 28th day of December, 1927.

E. M. KUHNS,
R. R. NEVIN,
SULLIVAN & CROMWELL,
DINSMORE, SHOHL & SAWYER,
Attorneys for Defendants in Error.

130–131 [Citation in usual form showing service on R. R. Nevin et al. filed Dec. 23, 1927, omitted in printing.]

132 [Clerk's certificate to foregoing transcript omitted in printing.]

133 In Supreme Court of the United States

Statement of points upon which the plaintiff in error intends to rely and designation to print the entire record

Filed January 27, 1928

The plaintiff in error intends to rely upon the contention that the District Court erred in sustaining a so-called motion, which was in fact and in substance a special plea in bar based upon the statute of limitations, to the charges against the several defendants in

error in the information in criminal contempt in this cause, upon the following grounds:

1. That the general period of limitation applicable to criminal contempt cases is three years, under the provision of Rev. Stats. 1044, and not one year as held by the District Court.

2. That in view of the express language of section 24 of the Clayton Act (act of October 15, 1914, chapter 323, 37 Stat. 730, 740; U. S. C. Title 28, section 389) the one-year period of limitation specified in section 25 of the same Clayton Act (U. S. C. Title 28, section 390) has no application to criminal contempt cases arising out of violations of decrees entered in suits brought by the United States.

134 The plaintiff in error thinks that the entire record as filed will be necessary for the consideration of the contentions above enumerated.

WILLIAM D. MITCHELL,
Solicitor General.

J.

Dated JANUARY 27, 1928.

Service of a copy of the foregoing statement of points is hereby acknowledged on behalf of all defendants in error this day of , 1928.

135 [File endorsement omitted.]

136 Department of Justice, office of the Solicitor General.

Hon. WILLIAM D. MITCHELL,
Solicitor General.

DEAR SIR: Service of a copy of the statement of points on which plaintiff in error intends to rely in the above-entitled cause is hereby acknowledged this day of , 19 .

Respectfully,

ROBERT R. NEVIN,
Of Counsel for Defendants in Error.

137 Department of Justice, office of the Solicitor General.

Hon. WILLIAM D. MITCHELL,
Solicitor General.

DEAR SIR: Service of a copy of the statement of points on which plaintiff in error intends to rely
brief on behalf of
in above-entitled cause is hereby acknowledged, this 13th day of February, 1928.

Respectfully,

FRANK F. DINSMORE,
Counsel for Defendants in Error.

DINSMORE, SHOHL & SAWYER,
Of Counsel.

138 Department of Justice, office of the Solicitor General.

Hon. WILLIAM D. MITCHELL,
Solicitor General.

DEAR SIR: Service of a copy of the statement of points on which plaintiff in error intends to rely in the above-entitled cause is hereby acknowledged this 13 day of February, 1928.

Respectfully,

EZRA M. KUHNS,
Counsel for Defendants in Error.

[Stamped:] Office of Solicitor General. Received Feb. 15, 1928.

[Endorsement on cover:] File No. 33175. S. Ohio, D. C. U. S. Term No. 723. The United States of America, plaintiff in error, vs. Jacob A. Goldman, Louis J. Desmare, Clem Miner, et al. Filed January 27th, 1928. File No. 33175.

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